TEXAS REGISTER

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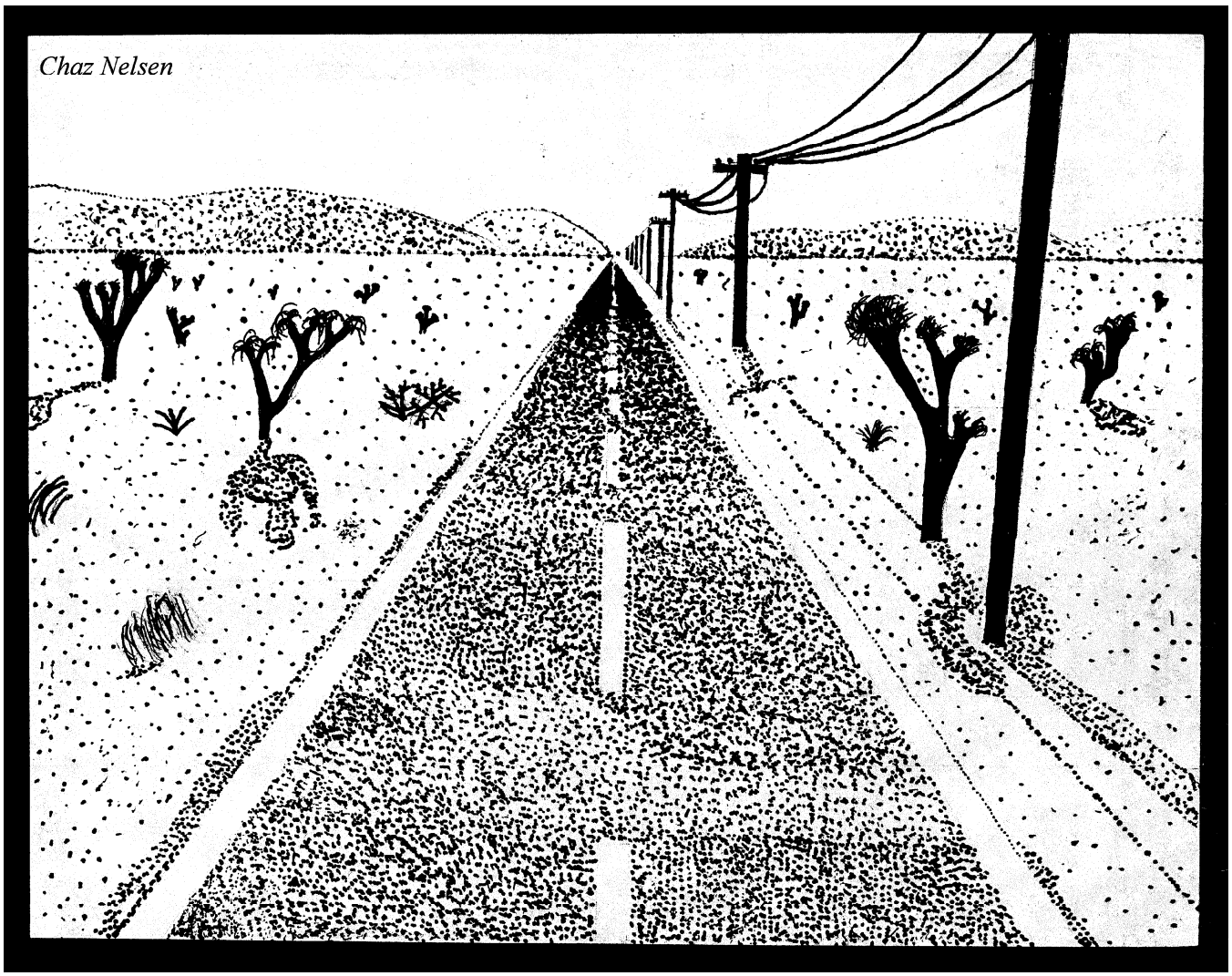

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0785-GA

Requestor:

Ms. Hope Andrade

Secretary of State

Post Office Box 12697

Austin, Texas 78711-2697

Re: Effect of a final conviction for a felony or a misdemeanor crime of moral turpitude on a notary public application or commission (RQ-0785-GA)

Briefs requested by April 13, 2009

RQ-0786-GA

Requestor:

The Honorable Armando G. Barrera

79th Judicial District Attorney

Jim Wells and Brooks Counties

Post Office Drawer 3157

Alice, Texas 78333

Re: Authority of a county bail bond board to assess a fee to bail bond companies to recover the costs of hiring a bail bond administrator (RQ-0786-GA)

Briefs requested by April 16, 2009

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200901113
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: March 17, 2009

♦ ♦ ♦

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 190. DISCIPLINARY GUIDELINES
SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) adopts an amendment on an emergency basis to Chapter 190, relating to Disciplinary Guidelines, §190.8, Violation Guidelines.

The emergency amendment to §190.8 adds an exception to the requirement in paragraph (1)(L) that a physician may only prescribe drugs to a person with whom a proper professional relationship has been established, for the prescription of drugs for a partner of a patient who may have a sexually transmitted disease.

The amendment is adopted on an emergency basis under §2001.034 of the Texas Government Code. The Board finds that the amendment will allow for the immediate treatment of sexually transmitted diseases contracted by partners of patients and therefore remove a current peril to the public health, safety or welfare.

Elsewhere in this issue of the *Texas Register,* the Texas Medical Board contemporaneously proposes this amendment for permanent adoption.

The amendment is adopted on an emergency basis under §2001.034 of the Texas Government Code and under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by the emergency adoption of the amendment.

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) - (K) (No change.)

(L) prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

(i) - (ii) (No change.)

(iii) Notwithstanding the provisions of this subparagraph, establishing a professional relationship is not required for a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease.

(M) - (N) (No change.)

(2) - (6) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 16, 2009.

TRD-200901085
Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Effective Date: April 4, 2009
Expiration Date: August 1, 2009
For further information, please call: (512) 305-7016

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 58. RENTAL PURCHASE AGREEMENTS

16 TAC §§58.1, 58.10, 58.21, 58.70, 58.80, 58.90

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of existing rules at 16 Texas Administrative Code ("TAC") Chapter 58, §§58.1, 58.10, 58.21, 58.70, 58.80, and 58.90 regarding rental-purchase agreements.

The current rules at 16 TAC Chapter 58 implement the current statutory requirements under Texas Business and Commerce Code, Chapter 35, Subchapter F. However, as the result of a rule review conducted in accordance with Texas Government Code §2001.039 (see the October 19, 2007, issue of the *Texas Register* (32 TexReg 7511)) and House Bill 2278, passed by the 80th Legislature, which recodified the Texas Business and Commerce Code, Chapter 35, Subchapter F, to Texas Business and Commerce Code, Chapter 92, effective April 1, 2009, the Department is proposing that the current rules, 16 TAC Chapter 58, be repealed and replaced with new 16 TAC Chapter 81 proposed in this issue of the *Texas Register.*

The Department has determined that the repeal is necessary to update statutory citations as a result of House Bill 2278 and to reflect current Department procedures regarding restructuring of administrative rule chapters.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal is in effect, the public benefit will be rules that reflect the current policies and procedures of the Department.

Mr. Kuntz has determined that there are no anticipated economic costs to small or micro-businesses or to persons who are required to comply with the repeal as proposed.

Since the agency has determined that the repeal will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The repeal is proposed under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department and Texas Business and Commerce Code, Chapter 35, Subchapter F.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute and pursuant to House Bill 2278, passed by the 80th Legislature, which recodified the Texas Business and Commerce Code, Chapter 35, Subchapter F, to Texas Business and Commerce Code, Chapter 92, effective April 1, 2009. No other statutes, articles, or codes are affected by the proposed repeal.

§58.1. Authority.

§58.10. Definitions.

§58.21. Review Requirements-Rental Agreements.

§58.70. Responsibilities of Merchants.

§58.80. Fees.

§58.90. Administrative Penalties and Sanctions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 16, 2009.

TRD-200901098
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 463-7348

♦ ♦ ♦

CHAPTER 81. RENTAL PURCHASE AGREEMENTS

16 TAC §§81.1, 81.10, 81.21, 81.70, 81.80, 81.90

The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code ("TAC") Chapter 81, §§81.1, 81.10, 81.21, 81.70, 81.80, and 81.90 regarding rental-purchase agreements.

As the result of a rule review conducted in accordance with Texas Government Code §2001.039 (see the October 19, 2007, issue of the *Texas Register* (32 TexReg 7511)) and House Bill 2278, passed by the 80th Legislature, which recodified the Texas Business and Commerce Code, Chapter 35, Subchapter F, to Texas Business and Commerce Code, Chapter 92, effective April 1, 2009, the Department is proposing new rules at 16 TAC Chapter 81.

The Department has determined that the new rules are are necessary to update statutory citations, clarify statutory and administrative rule requirements, and reflect current Department procedures.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rules are in effect there will be no cost to state or local government as a result of enforcing or administering the new rules because the rules did not substantively change.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be rules that reflect the current policies and procedures of the Department.

Mr. Kuntz has determined that there are no anticipated economic costs to small or micro-businesses or to persons who are required to comply with the new rules as proposed because the rules did not substantively change.

Since the agency has determined that the rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

The new rules are proposed as the result of a rule review conducted in accordance with Texas Government Code §2001.039. The new rules are proposed under Texas Occupations Code, §51.201(b) and §51.203, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement Chapter 51 and any other law establishing a program regulated by the Department. In addition, the new rules are proposed in accordance with Texas Business and Commerce Code, Chapter 35, Subchapter F.

The statutory provisions affected by the proposed new rules are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute and pursuant to House Bill 2278, passed by the 80th Legislature, which recodified the Texas Business and Commerce Code, Chapter 35, Subchapter F, to Texas Business and Commerce Code, Chapter 92, effective April 1, 2009. No other statutes, articles, or codes are affected by the proposed new rules.

§81.1. Authority.

These rules are promulgated under the authority of Texas Business and Commerce Code, Chapter 92, and Texas Occupations Code, Chapter 51.

§81.10. Definitions.

The following words and terms, when used in this chapter, have the following meanings.

(1) Rental Agreement--A rental-purchase agreement as defined in Texas Business and Commerce Code, §92.001(8) that includes a loss damage waiver, either as an integral part or as an attachment.

(2) Merchant--A person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of merchandise under a rental-purchase agreement, and includes a person who is assigned an interest in a rental-purchase agreement.

§81.21. Review Requirements--Rental Agreements.

(a) Merchants must submit all rental agreements for review and may not use or offer the rental agreement in Texas until notified by the Department.

(b) Each rental agreement submitted to the Department for review must:

(1) be accompanied by a review fee;

(2) be accompanied by a rental purchase agreement review application; and

(3) include the entire rental agreement including any addenda or attachments.

(c) If the rental agreement is amended after the department's initial or annual approval, merchants must submit the amended rental agreement for approval before using or offering the rental agreement in Texas.

(d) Merchants must submit all rental agreements for review annually. After the period of approval for the rental agreement has expired a merchant may not use or offer the rental agreement in Texas.

§81.70. Responsibilities of Merchants.

(a) A merchant must include the following written notification in all rental agreements: "For more information regarding the approval of loss damage waivers visit www.license.state.tx.us. You may also direct inquiries to the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599."

(b) The department issued rental agreement approval number must be listed on each rental agreement.

(c) A merchant shall allow the department to audit, examine, and copy any and all records maintained by the merchant pursuant to or relating to rental agreements as defined in §81.10 of this chapter.

§81.80. Fees.

(a) Original application fee is $300.

(b) Annual review fee is $300.

(c) Amended rental agreement review fee is $300.

(d) All fees are non-refundable.

§81.90. Administrative Penalties and Sanctions.

If a person violates any provision of Texas Business and Commerce Code, Chapter 92, Subchapter D, any provision of Title 16, Texas Administrative Code, Chapter 81, or any provision of an order of the Executive Director or Commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Texas Business and Commerce Code, Chapter 92; Texas Occupations Code, Chapter 51 and applicable rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 16, 2009.

TRD-200901099
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 190. DISCIPLINARY GUIDELINES
SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board (Board) proposes an amendment to Chapter 190, relating to Disciplinary Guidelines, §190.8, Violation Guidelines.

The amendment to §190.8 adds an exception to the requirement in paragraph (1)(L) that a physician may only prescribe drugs to a person with whom a proper professional relationship has been established, for the prescription of drugs for a partner of a patient who may have a sexually transmitted disease.

Elsewhere in this issue of the *Texas Register,* the Texas Medical Board contemporaneously adopts the amendment on an emergency basis.

Robert D. Simpson, General Counsel for the Board, has determined that for the first five-year period the section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed.

Mr. Simpson has also determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to authorize physicians to prescribe medication for a partner of a patient who may have a sexually transmitted disease. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

No other statutes, articles or codes are affected by this proposal.

§190.8. Violation Guidelines.

When substantiated by credible evidence, the following acts, practices, and conduct are considered to be violations of the Act. The following shall not be considered an exhaustive or exclusive listing.

(1) Practice Inconsistent with Public Health and Welfare. Failure to practice in an acceptable professional manner consistent with public health and welfare within the meaning of the Act includes, but is not limited to:

(A) - (K) (No change.)

(L) prescription of any dangerous drug or controlled substance without first establishing a proper professional relationship with the patient.

(i) - (ii) (No change.)

(iii) Notwithstanding the provisions of this subparagraph, establishing a professional relationship is not required for a physician to prescribe medications for sexually transmitted diseases for partners of the physician's established patient, if the physician determines that the patient may have been infected with a sexually transmitted disease.

(M) - (N) (No change.)

(2) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2009.

TRD-200901067
Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 305-7016

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES
SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §281.65

The Texas State Board of Pharmacy proposes amendments to §281.65, concerning Schedule of Administrative Penalties. The amendments, if adopted, increase the administrative penalties for allowing individuals to work in a pharmacy without a pharmacy technician registration or with a delinquent pharmacy technician registration.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to deter future violations and to enhance protection of the public. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2009.

The amendments are proposed under §§551.002, 554.051, 565.051, and 568.035 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §565.051 as authorizing the agency to discipline a license holder or applicant for a license or renewal of a license. The Board interprets §568.035 as authorizing the agency to discipline an applicant or registrant.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.65. Schedule of Administrative Penalties.

The board has determined that the assessment of an administrative penalty promotes the intent of §551.002 of the Act. In disciplinary matters, the board may assess an administrative penalty in addition to any other disciplinary action in the circumstances and amounts as follows:

(1) The following violations by a pharmacist may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) - (Q) (No change.)

(R) allowing an individual to perform the duties of a pharmacy technician without a valid registration: $500 - $2,000 [~~$250 - $1,000~~];

(S) - (CC) (No change.)

(2) The following violations by a pharmacy may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) - (P) (No change.)

(Q) allowing an individual to perform the duties of a pharmacy technician without a valid registration: $500- 3,000 [~~$250 - $1500~~];

(R) - (BB) (No change.)

(3) - (6) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 16, 2009.

TRD-200901087
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 305-8028

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CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.4, §283.6

The Texas State Board of Pharmacy proposes amendments to §283.4, concerning Internship Requirements, and §283.6, concerning Preceptor Requirements and Ratio of Preceptors to Pharmacist-Interns. The amendments, if adopted, clarify the requirements for a change of name or change of address for pharmacist interns, clarify the charge for a duplicate or amended certificate for pharmacist interns and preceptors, eliminate the requirement that a preceptor have one year of experience in the type of internship practice setting and only require the preceptor to have a year of experience as a licensed pharmacist, and eliminate the ratio of preceptors to pharmacist-interns in Texas college or school of pharmacy programs.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to clarify the notification requirements for interns with regard to a name change or address change and the charge for duplicate or amended certificates. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2009.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§283.4. Internship Requirements.

(a) - (b) (No change.)

(c) College-/School-Based Internship Programs.

(1) Internship experience acquired by student-interns.

(A) (No change.)

(B) The terms of the student internship shall be as follows.

(i) The student internship shall be gained concurrent with college attendance, which may include:

(I) partial semester breaks such as spring breaks;

(II) between semester breaks; and

(III) whole semester breaks provided the student-intern attended the college/school in the immediate preceding semester and is scheduled with the college/school to attend in the immediate subsequent semester.

(ii) The student internship shall be obtained in pharmacies licensed by the board, federal government pharmacies, or in a board-approved program.

(iii) The student internship shall be in the presence of and under the supervision of a healthcare professional preceptor or a pharmacist preceptor.

(C) (No change.)

(2) - (3) (No change.)

(d) - (e) (No change.)

(f) Change of address and/or name. [~~Pharmacist-intern Notification Requirement. A pharmacist-intern shall notify the board in writing within 10 days of a change of address, giving the old and new address.~~]

(1) Change of address. A pharmacist-intern shall notify the board electronically or in writing within 10 days of a change of address, giving the old and new address.

(2) Change of name. A pharmacist-intern shall notify the board in writing within 10 days of a change of name by:

(A) sending a copy of the official document reflecting the name change (e.g., marriage certificate, divorce decree, etc.);

(B) returning the current pharmacist-intern certificate which reflects the previous name; and

(C) paying a fee of $20.

(g) Duplicate or amended certificate. The fee for issuance of a duplicate or amended pharmacist-intern registration certificate shall be $20.

§283.6. Preceptor Requirements and Ratio of Preceptors to Pharmacist-Interns.

(a) Preceptor requirements.

(1) - (2) (No change.)

(3) To be recognized as a pharmacist preceptor, a pharmacist must:

(A) have at least:

(i) one year of experience as a licensed pharmacist [~~in the type of internship practice setting~~]; or

(ii) six months of residency training if the pharmacy resident is in a program accredited by the American Society of Health-System Pharmacists;

(B) - (C) (No change.)

(b) Ratio of preceptors to pharmacist-interns.

(1) (No change.)

(2) The following is applicable to Texas college/school of pharmacy internship program only.

(A) Supervision. Supervision of a pharmacist-intern shall be:

(i) direct supervision when the student-intern or intern-trainee is engaged in functions associated with the preparation and delivery of prescription or medication drug orders; and

(ii) general supervision when the student-intern or intern-trainee is engaged in functions not associated with the preparation and delivery of prescription or medication drug orders.

(B) Exceptions to the 1:1 ratio. There is no ratio requirement for preceptors supervising intern-trainees and student-interns as a part of a Texas college/school of pharmacy program.

[~~*(i)* There is no ratio requirement for preceptors supervising intern-trainees and student-interns as a part of a Texas college/school of pharmacy when the intern-trainees and student-interns are not engaging in dispensing activities, patient counseling, or any activities requiring independent judgement.~~]

[~~*(ii)* A preceptor for a Texas college/school of pharmacy internship program may supervise one intern-trainee and one student-intern except as described in clause (i) of this subparagraph.~~]

[~~*(iii)* Texas college/schools of pharmacy may request a different preceptor to pharmacist-intern ratio during the board's annual review and approval of their college/school based, structured internship program. Any such ratio shall apply only to the internship experience acquired as a part of the college/school based, structured internship program.~~]

[~~*(iv)* In an emergency caused by a natural or man-made disaster or any other exceptional situation that causes an extraordinary demand for preceptors, the executive director of the board, in his/her discretion, may allow a preceptor in a Texas college/school of pharmacy internship program to supervise up to two interns. The executive director shall notify the Texas colleges/schools of pharmacy of the length of time a preceptor may supervise up to two interns.~~]

(c) (No change.)

(d) The fee for issuance of a duplicate or amended preceptor certificate shall be $20.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 16, 2009.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.1, §291.3

The Texas State Board of Pharmacy proposes amendments to §291.1, concerning Pharmacy License Application, and §291.3, concerning Required Notifications. The amendments, if adopted, clarify that pharmacies are required to notify patients

when a pharmacy is changing locations, clarify that pharmacies are required to report the loss of controlled substances and dangerous drugs due to forged prescriptions, and delete the option of providing a notarized statement signed by the lessee and lessor certifying the existence of a lease as a part of the application for a pharmacy license.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that patients are notified when a pharmacy changes location, pharmacies properly notify the Board when prescriptions are forged by licensees or registrants, and an applicant for a pharmacy license has a proper lease. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2009.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.1. Pharmacy License Application.

(a) To qualify for a pharmacy license, the applicant must submit an application including the following information:

(1) - (5) (No change.)

(6) copy of lease agreement [~~or alternatively, a notarized statement signed by the lessee and lessor certifying the existence of a lease agreement,~~] or if the location of the pharmacy is owned by the applicant, a notarized statement certifying such location ownership;

(7) - (15) (No change.)

(b) - (h) (No change.)

§291.3. Required Notifications.

(a) Change of Location and/or Name.

(1) (No change.)

(2) At least 14 days prior to the change of location of a pharmacy that dispenses prescription drug orders, the pharmacist-in-charge shall post a sign in a conspicuous place indicating that the pharmacy is changing locations. Such sign shall be in the front of the prescription department and at all public entrance doors to the pharmacy and shall indicate the date the pharmacy is changing locations.

(3) [~~(2)~~] Disasters, accidents, and emergencies which require the pharmacy to change location shall be immediately reported to the board. If a pharmacy changes location suddenly due to disasters, accidents, or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the change of location, the pharmacist-in-charge shall comply with the provisions of paragraph (2) of this subsection as far in advance of the change of location as allowed by the circumstances.

(b) (No change.)

(c) Change of Ownership.

(1) (No change.)

(2) The new application shall include the following information:

(A) the name and address of pharmacy;

(B) the type of ownership;

(C) the names, home addresses, dates of birth, phone numbers, and social security numbers of all owners; if a partnership or corporation, the name, title, home address, home phone number, date of birth, and social security number of all managing officers;

(D) the name and license number of the pharmacist-in-charge and of other pharmacists employed by the pharmacy;

(E) a copy of lease agreement [~~or alternatively, a notarized statement signed by the lessee and lessor certifying the existence of a lease agreement,~~] or if the location of the pharmacy is owned by the applicant, a notarized statement certifying such location ownership;

(F) a copy of the purchase contract or mutual agreement between the buyer and seller, or a notarized statement of intent to convey ownership signed by both the buyer and seller, stating the proposed date of ownership change;

(G) the signature of the pharmacist-in-charge;

(H) the notarized signature of the owner, or if the pharmacy is owned by a partnership or corporation, the notarized signature of an owner or managing officer;

(I) federal tax ID number;

(J) description of business services that will be offered;

(K) name and address of malpractice insurance carrier or statement that the business will be self-insured;

(L) the certificate of authority, if applicant is an out-of-state corporation;

(M) the articles of incorporation, if the applicant is a corporation;

(N) a current Texas Franchise Tax Certificate of Good Standing; and

(O) any other information requested on the application.

(3) - (5) (No change.)

(d) - (g) (No change.)

(h) Notification of Licensees or Registrants Obtaining Controlled Substances or Dangerous Drugs by Forged Prescriptions. If a licensee or registrant obtains controlled substances or dangerous drugs from a pharmacy by means of a forged prescription, the pharmacy shall report in writing to the board immediately on discovery of such forgery. A pharmacy shall be in compliance with this subsection by submitting to the board the following:

(1) name of licensee or registrant obtaining controlled substances or dangerous drugs by forged prescription;

(2) date(s) of forged prescription(s);

(3) name(s) and amount(s) of drug(s); and

(4) copies of forged prescriptions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33, §291.34

The Texas State Board of Pharmacy proposes amendments to §291.33, concerning Operational Standards, and §291.34, concerning Records. The amendments, if adopted, allow for the secure storage, management, and purchase/delivery of prescription medications during and after pharmacy hours from an automated storage and distribution device, and clarify that an original prescription may only be dispensed if the prescription is authorized by the prescriber.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure the safe use of automated storage and distribution devices and prescriptions are dispensed as authorized. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2009.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.33. Operational Standards.

(a) (No change.)

(b) Environment.

(1) (No change.)

(2) Security.

(A) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(B) The prescription department shall be locked by key, combination or other mechanical or electronic means to prohibit unauthorized access when a pharmacist is not on-site except as provided in subparagraphs (C) and (D) of this paragraph and paragraph (3) of this subsection. The following is applicable:

(i) If the prescription department is closed at any time when the rest of the facility is open, the prescription department must be physically or electronically secured. The security may be accomplished by means such as floor to ceiling walls; walls, partitions, or barriers at least 9 feet 6 inches high; electronically monitored motion detectors; pull down sliders; or other systems or technologies that will secure the pharmacy from unauthorized entrance when the pharmacy is closed. Pharmacies licensed prior to June 1, 2009, shall be exempt from this provision unless the pharmacy changes location. Change of location shall include the relocation of the pharmacy within the licensed address. A pharmacy licensed prior to June 1, 2009 that files a change of ownership but does not change location shall be exempt from the provisions.

(ii) Effective, June 1, 2009, the pharmacy's key, combination, or other mechanical or electronic means of locking the pharmacy may not be duplicated without the authorization of the pharmacist-in-charge or owner.

(iii) Effective, June 1, 2009, at a minimum, the pharmacy must have a basic alarm system with off-site monitoring and perimeter and motion sensors. The pharmacy may have additional security by video surveillance camera systems.

(C) Prior to authorizing individuals to enter the prescription department, the pharmacist-in-charge or owner may designate persons who may enter the prescription department to perform functions, other than dispensing functions or prescription processing, documented by the pharmacist-in-charge including access to the prescription department by other pharmacists, pharmacy personnel and other individuals. The pharmacy must maintain written documentation of authorized individuals other than individuals employed by the pharmacy who accessed the prescription department when a pharmacist is not on-site.

(D) Only persons designated either by name or by title including such titles as "relief" or "floater" pharmacist, in writing by the pharmacist-in-charge may unlock the prescription department except in emergency situations. An additional key to or instructions on accessing the prescription department may be maintained in a secure location outside the prescription department for use during an emergency or as designated by the pharmacist-in-charge for entry by another pharmacist.

(E) Written policies and procedures for the pharmacy's security shall be developed and implemented by the pharmacist-in-charge and/or the owner of the pharmacy. Such polices and procedures may include quarterly audits of controlled substances commonly abused or diverted; perpetual inventories for the comparison of the receipt, dispensing, and distribution of controlled substances; monthly reports from the pharmacy's wholesaler(s) of controlled substances purchased by the pharmacy; opening and closing procedures; product storage and placement; and central management oversight.

(3) Temporary absence of pharmacist.

(A) (No change.)

(B) Pharmacist is off-site.

(i) The prescription department must be secured with procedures for entry during the time that a pharmacy is not under the continuous on-site supervision of a pharmacist and the pharmacy is not open for pharmacy services.

(ii) Pharmacy technicians and pharmacy technician trainees may not perform any duties of a pharmacy technician or pharmacy technician trainee during the time that the [~~a~~] pharmacist is off-site.

(iii) A pharmacy may use an automated storage and distribution device as specified in subsection (i) of this section for pick-up of a previously verified prescription by a patient or patient's agent, provided the following conditions are met:

(I) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return.

(II) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(III) the prescription department is locked and secured to prohibit unauthorized entry.

(iv) [~~(iii)~~] An agent of the pharmacist may deliver a previously verified prescription to a patient or patient's agent during short periods of time when a pharmacist is off-site, provided the following conditions are met:

(I) short periods of time may not exceed two consecutive hours in a 24 hour period;

(II) a notice is posted which includes the following information:

(-a-) the pharmacist is off-site and not present in the pharmacy;

(-b-) no new prescriptions may be prepared at the pharmacy but previously verified prescriptions may be delivered to the patient or the patient's agent; and

(-c-) the date/time when the pharmacist will return.

(III) the pharmacy must maintain documentation of the absences of the pharmacist(s); and

(IV) the prescription department is locked and secured to prohibit unauthorized entry.

(v) [~~(iv)~~] During the time a pharmacist is absent from the prescription department and is off-site, a record of prescriptions delivered must be maintained and contain the following information:

(I) date and time of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(vi) [~~(v)~~] Any prescription delivered to a patient when a pharmacist is not on-site at the pharmacy must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(c) - (h) (No change.)

(i) Automated devices and systems.

(1) - (4) (No change.)

(5) Automated storage and distribution device. A pharmacy may use an automated storage and distribution device to deliver a previously verified prescription to a patient or patient's agent provided:

(A) the device is used to deliver refills of prescription drug orders and shall not be used to deliver new prescriptions as defined by §291.31(26) of the title (Relating to Definitions);

(B) the automated storage and distribution device may not be used to deliver a controlled substance;

(C) drugs stored in the automated storage and distribution device are stored at proper temperatures;

(D) the patient or patient's agent is given the option to use the system;

(E) the patient or patient's agent has access to a pharmacist for questions regarding the prescription either at the pharmacy where the automated storage and distribution device is located or by a telephone available at the pharmacy that connects directly to another pharmacy;

(F) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(G) the automated storage and distribution device has been tested by the pharmacy and found to dispense prescriptions accurately. The pharmacy shall make the results of such testing available to the board upon request;

(H) the automated storage and distribution device may be loaded with previously veritied prescriptions only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist;

(I) the pharmacy will make the automated storage and distribution device available for inspection by the board;

(J) the automated storage and distribution device is located within the pharmacy building whereby pharmacy staff has access to the device from within the prescription department and patients have access to the device from outside the prescription department. The device may not be located on an outside wall of the pharmacy and may not be accessible from a drive-thru;

(K) the automated storage and distribution device is secure from access and removal of prescription drug orders by unauthorized individuals;

(L) the automated storage and distribution device has adequate security system to prevent unauthorized access and to maintain patient confidentiality; and

(M) the automated storage and distribution device records a digital image of the individual accessing the device to pick-up a prescription and such record is maintained by the pharmacy for two years.

§291.34. Records.

(a) (No change.)

(b) Prescriptions.

(1) - (4) (No change.)

(5) Original prescription drug order records.

(A) Original prescriptions may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order.

(B) [~~(A)~~] Original prescriptions shall be maintained by the pharmacy in numerical order and remain legible for a period of two years from the date of filling or the date of the last refill dispensed.

(C) [~~(B)~~] If an original prescription drug order is changed, such prescription order shall be invalid and of no further force and effect; if additional drugs are to be dispensed, a new prescription drug order with a new and separate number is required.

(D) [~~(C)~~] Original prescriptions shall be maintained in three separate files as follows:

(i) prescriptions for controlled substances listed in Schedule II;

(ii) prescriptions for controlled substances listed in Schedules III - V; and

(iii) prescriptions for dangerous drugs and nonprescription drugs.

(E) [~~(D)~~] Original prescription records other than prescriptions for Schedule II controlled substances may be stored on microfilm, microfiche, or other system which is capable of producing a direct image of the original prescription record, e.g., digitalized imaging system. If original prescription records are stored in a direct imaging system, the following is applicable:

(i) the record of refills recorded on the original prescription must also be stored in this system;

(ii) the original prescription records must be maintained in numerical order and separated in three files as specified in subparagraph (D) [~~(C)~~] of this paragraph; and

(iii) the pharmacy must provide immediate access to equipment necessary to render the records easily readable.

(6) - (7) (No change.)

(c) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. SERVICES PROVIDED BY PHARMACIES

22 TAC §291.129

The Texas State Board of Pharmacy proposes amendments to §291.129, concerning Satellite Pharmacy. The amendments, if adopted, delete the option of providing a notarized statement signed by the lessee and lessor certifying the existence of a lease as a part of the application for a pharmacy license and correct the citation with regard to Storage of Drugs.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that an applicant for a pharmacy license has a proper lease. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2009.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.129. Satellite Pharmacy.

(a) - (d) (No change.)

(e) Operational requirements.

(1) Application for permission to provide satellite pharmacy services.

(A) A Class A or Class C pharmacy shall make application to the board to provide satellite pharmacy services. The application shall contain an affidavit with the notarized signatures of the pharmacist-in-charge and the person responsible for the on-site operation of the facility where the satellite pharmacy will be located and include the following:

(i) - (iii) (No change.)

(iv) copy of the lease agreement or if the location of the satellite pharmacy is owned by the applicant, a notarized statement certifying such location ownership [~~or alternatively, a notarized statement signed by the lessee and lessor certifying the existence of a lease~~].

(B) - (C) (No change.)

(2) (No change.)

(3) Environment.

(A) - (C) (No change.)

(D) The temperature of the satellite pharmacy shall be maintained within a range compatible with the proper storage of drugs in compliance with the provisions of §291.15 of this title (relating to Storage of Drugs) [~~§291.33(f) of this title including the requirements for temperature~~]. The temperature of the refrigerator shall be main-

tained within a range compatible with the proper storage of drugs requiring refrigeration.

(E) (No change.)

(4) - (7) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 453. OFFENDER EDUCATION PROGRAMS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §§453.101 - 453.122 and new §§453.101 - 453.124, concerning Offender Education Programs established for alcohol and drug-related offenses.

BACKGROUND AND PURPOSE

Through the enactment of House Bill 2292, 78th Legislature, 2003, the Texas Commission on Alcohol and Drug Abuse was abolished and its powers, duties, functions, programs, and activities were transferred to the department. The rules were transferred from 40 Texas Administrative Code (TAC) Part 3, Chapter 153, to 25 TAC Part 1, Chapter 453, on September 1, 2004.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 453.101 - 453.122 have been reviewed and the department has determined that, except as amended and renumbered under the proposed new rules, as further described in this preamble, the reasons for adopting the sections continue to exist because rules on this subject are needed. The proposed new rules for Offender Education Programs set forth curricula, training, certification, operational, and enforcement standards for the four types of department-approved Offender Education Programs, which are the DWI Education Program, DWI Intervention Program, Drug Offender Education Program, and Alcohol Education Program for Minors. The DWI Education and Intervention Programs are designed, respectively, for first-time and repeat offenders convicted of one of a number of offenses related to driving or operating a motorized vehicle while intoxicated.

SECTION-BY-SECTION SUMMARY

The repeal of §§453.101 - 453.122 and new §§453.101 - 453.124 are necessary to allow for reorganization and enhancement of the rules governing Offender Education Programs to, in addition to making changes and additions specifically outlined, ensure appropriate section, subsection, and paragraph organization and captioning; improve clarity and draftsmanship; contribute to agency-wide consistency between programs, as appropriate; ensure that the rules reflect current legal, policy, and operational considerations; and update legal citations and agency references. Provisions specifically addressing criminal history standards, setting forth more specific enforcement procedures, and creating a certification period and continuing education requirement for Alcohol Education Program for Minors and DWI Intervention instructors, consistent with the other Offender Education Programs, were also added to the chapter.

New §453.101 contains definitions for the chapter, including added definitions for class, course, course records, course roster, department, in-service, instructor applicant, instructor certification period, and program certification period, and additions and modifications to other terms needed to update or clarify the meaning of terms used within the chapter.

New §453.102 sets forth the certification requirement for Offender Education Programs and Instructors and the scope of the chapter's rules.

New §453.103 specifies certification-related fees, and separately identifies a $5 fee for branch sites, including headquarter relocation fees, which are charged under existing rules as certificate duplication fees. This additional itemization of fees does not alter the fees charged or collected under existing rules.

New §453.104 specifies the qualifications and prerequisites for applicants to become certified instructors for Offender Education Programs, including standards of conduct and criminal history standards relevant to the department's certification decision. Administrators and instructors will be required to report any known felony or misdemeanor convictions to the department within ten days of learning of the conviction.

New §453.105 outlines the requirements for renewal of an Instructor certification. It establishes a certification period and continuing education requirement for Instructors of the Alcohol Education Program for Minors and DWI Intervention instructors, which will provide for greater consistency among the Offender Education Programs and contribute to the ongoing quality of instruction in all programs. Greater detail is also provided concerning options for fulfilling continuing education.

New §453.106 specifies the requirements for applicants seeking certification as approved Offender Education Programs and outlines procedures for establishing branch sites and program headquarters.

New §453.107 specifies the requirements for program renewals and the requirement to re-apply for certification after a program certification expires without timely renewal.

New §453.108 specifies the curricula requirements for approved Offender Education Programs and corrects the address where the public may view the curricula.

New §453.109 contains provisions relating to uniform certificates of course completion for the Offender Education Programs, and adds clarifying language concerning requirements for providing notification of course completion to the Department of Public Safety (DPS) and the appropriate community supervision and corrections department. It also adds a requirement that unused

certificates of course completion be returned to the department after a Program's certification is expired or otherwise terminated.

New §453.110 sets forth the requirements for classroom facilities and equipment to be utilized in the Offender Education Programs.

New §453.111 sets forth the requirements relating to the administration of Offender Education Programs, provides for inactivation of a Program certificate when a program lacks a currently certified program administrator, and clarifies requirements concerning referrals of prospective participants to an Offender Education Program.

New §453.112 sets forth the recordkeeping and reporting requirements for each type of Offender Education Program, and provides for inactivation of a Program certificate when a program fails to provide a timely annual report.

New §453.113 sets forth the general program operation requirements of the Offender Education Programs.

New §453.114 sets forth minimum teaching requirements for Drug Offender Education Programs, with specific requirements for each course taught.

New §453.115 sets forth minimum teaching requirements for each Alcohol Education Program for Minors, with specific requirements for each course taught.

New §453.116 sets forth minimum teaching requirements for DWI Education Programs, with specific requirements for each course taught, and adds clarifying language concerning requirements for providing notification of course completion to the DPS and the appropriate community supervision and corrections department.

New §453.117 sets forth minimum teaching requirements for DWI Intervention Programs, with specific requirements for each course taught, and adds clarifying language concerning the maximum number of DWI intervention make-up classes permitted and concerning requirements for providing notification of course completion to the DPS and the appropriate community supervision and corrections department.

New §453.118 requires Offender Education Programs to abide by applicable Federal and State laws regarding confidentiality of patient/client records.

New §453.119 prohibits Offender Education Programs from discriminating on the basis of gender, race, religion, age, national or ethnic origin, or disability of the participant.

New §453.120 requires Offender Education Programs to establish procedures to resolve participant complaints, to display the department's contact information, and to respond promptly to any request for information about the program's complaint procedures.

New §453.121 sets forth guidelines and minimum standards for Offender Education Programs to apply for exceptions to rule provisions because of alleged difficulty or hardship due to extenuating circumstances. The section adds to the existing rule for exceptions that no exceptions will be granted for Instructor teaching, in-service, or continuing education requirements.

New §453.122 sets forth more specific standards and procedures for the department to take action against an Offender Education Program or an Instructor for an Offender Education Program, and redefines actions available to the department, for conduct or behaviors described in this rule. The section also provides for an opportunity in certain cases for an applicant or holder of a certification to avoid adverse action through corrective action.

New §453.123 sets forth new rule provisions relating to criminal history standards and procedures, consistent with Occupations Code, Chapter 53, for Offender Education Program and Instructor applicants and certification holders. Instructor and Offender Education Program applicants and certifications are subject to denial, suspension or revocation based upon a conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an Offender Education program or Instructor.

New §453.124 establishes more detailed procedures by which the department may take action against an Offender Education Program or Instructor applicant or certification holder.

FISCAL NOTE

Celeste Lunceford Havis, Manager, Offender Education Group, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT

The department has determined that there will be no adverse economic impact on small business or micro-businesses required to comply with the sections as proposed. This determination was made because the repeals and new rules do not impose any new requirements that impose a cost on small businesses, as defined by Government Code, §2006.001. Small and micro-businesses will not be required to alter their business practices in order to comply with the new rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are anticipated economic costs to persons who are required to comply with new §453.105 that requires that each Alcohol Education Program for Minors instructor and each DWI Intervention instructor now will be required to obtain continuing education hours every two years in order to renew the instructor's certification. The department cannot estimate the cost of this requirement since the department does not set the costs for the continuing education, and the continuing education hours may be obtained by various means that will have variable costs.

There are not any new economic costs to persons who are required to comply with the repeals and new §§453.101 - 453.104 and §§453.106 - 453.124.

There is no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Lunceford Havis has also determined that, for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to protect and promote public health, safety, and welfare, by administering and monitoring standards for the certification of Offender Education Instructors and Programs.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Celeste Lunceford Havis, MS, LPC, Manager, Offender Education Group, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, P.O. Box 149347, MC 1982, Austin, Texas 78714-9347, (512) 834-6628, extension 2140, or by e-mail to celeste.lunceford@dshs.state.tx.us. When submitting comments by e-mail, please indicate "Comments on Proposed Rules" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

25 TAC §§453.101 - 453.122

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by the Transportation Code, §521.375 and §521.376; Code of Criminal Procedure, Article 42.12, §13(h) and (j); Alcoholic Beverage Code, §106.115; Health and Safety Code, §461.012(a)(18), which authorize fees and rulemaking in relation to Drug Offender Education, DWI Education, DWI Intervention, and Alcohol Awareness Programs and providers; Occupations Code, Chapter 53, which authorizes the establishment of guidelines governing practices under that chapter's criminal history provisions; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The repeals affect the Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§453.101. Definitions.

§453.102. Scope of Rules.

§453.103. Fees.

§453.104. Application and Approval/Certification.

§453.105. Expiration and Renewal.

§453.106. Exceptions.

§453.107. Disciplinary Action.

§453.108. Administrative Penalties for Offender Education Programs.

§453.109. Program Content and Materials.

§453.110. Uniform Certificates of Course Completion.

§453.111. Confidentiality.

§453.112. Discrimination Prohibited.

§453.113. Participant Complaints.

§453.114. Classroom Facilities and Equipment.

§453.115. Program Administration.

§453.116. Recordkeeping and Reporting.

§453.117. Program Instructors.

§453.118. General Program Operation Requirements.

§453.119. Additional Requirements for Drug Offender Education Programs.

§453.120. Additional Requirements for Alcohol Education Program for Minors.

§453.121. Additional Requirements for DWI Education Programs.

§453.122. Additional Requirements for DWI Intervention Programs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2009.

TRD-200901075
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 458-7111 x6972

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CHAPTER 453. OFFENDER EDUCATION PROGRAMS (FOR ALCOHOL AND DRUG-RELATED OFFENSES)

25 TAC §§453.101 - 453.124

STATUTORY AUTHORITY

The proposed new rules are authorized by the Transportation Code, §521.375 and §521.376; Code of Criminal Procedure, Article 42.12, §13(h) and (j); Alcoholic Beverage Code, §106.115;

Health and Safety Code, §461.012(a)(18), which authorize fees and rulemaking in relation to Drug Offender Education, DWI Education, DWI Intervention, and Alcohol Awareness Programs and providers; Occupations Code, Chapter 53, which authorizes the establishment of guidelines governing practices under that chapter's criminal history provisions; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The new rules affect the Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§453.101. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly states otherwise.

(1) Alcohol Education Program for Minors--A Program provider holding certification from the department demonstrating approval for it to offer an educational program to minors, pursuant to Alcoholic Beverage Code, §106.115 (relating to Attendance at Alcohol Awareness Course; License Suspension), that is taught exclusively by Instructors certified under this chapter and conducted in accordance with, and as described in, the Alcohol Education Program for Minors Instructor Manual authorized and approved by the department under §453.108 of this title (relating to Program Content and Materials). The educational program is designed to:

(A) present information to participants on the effects of alcohol upon behavior and upon the lives of persons who use alcohol;

(B) help participants identify their own drinking patterns or problems;

(C) educate participants about the laws relating to possession, consumption, and purchase of alcoholic beverages and laws relating to minors under the influence of alcohol; and

(D) assist participants in developing a plan to reduce the probability of involvement in future alcohol-related illegal behavior or detrimental activity.

(2) Annual Reporting Period--That period of time beginning September 1 of each year and ending August 31 of the following year.

(3) Branch Office/Site--An additional Offender Education Program site that is located in the same or adjacent county as the headquarters of a certified Offender Education Program.

(4) Certificates of Course Completion--Uniform, serially numbered certificates of completion required and designated by the department to be used by certified Offender Education Programs for dissemination to Offender Education Program participants upon successful completion of the applicable Offender Education Program.

(5) Class--A session of a complete Offender Education course or Administrator/Instructor training workshop.

(6) Continuing Education Hour--At least 50 minutes of participation in an organized, systematic learning experience which deals with and is designed for the acquisition of knowledge, skills, and information on drug or alcohol-related topics, as applicable to the particular Instructor certification.

(7) Course--The complete series of Offender Education class sessions.

(8) Course Records--Offender education participants' personal data forms, pre- and post-tests, self-assessments, screening instrument(s), homework assignments, action plans, and any other written material required or used in the offender education class instruction.

(9) Course Roster--A form used to record data on all offender education participants enrolled in the course and to record attendance data on those participants at each class throughout the course.

(10) Course Size--The number of offender education participants in a course, to be calculated according to the number of participants officially enrolled in the course or the greatest number of participants in attendance in any class within a course, whichever is greater.

(11) Department--The Department of State Health Services, its Commissioner, and its divisions, sections, units, groups, and employees. The term also encompasses, wherever applicable, the department's predecessor agency, the Texas Commission on Alcohol and Drug Abuse.

(12) Drug Offender--A person whose license is suspended under Transportation Code, §521.372 (relating to Automatic Suspension; License Denial) and any amendments thereto, for final conviction of an offense described in that section.

(13) Drug Offender Education Program--A Program provider holding certification from the department demonstrating approval for it to offer, pursuant to Transportation Code, §521.374 (relating to Educational Program), an educational program to Drug Offenders that is taught exclusively by Instructors certified under this chapter and conducted in accordance with, and as described in, the Texas Drug Offender Education Program Administrator/Instructor Manual authorized and approved by the department under §453.108 of this title. The program is designed to:

(A) educate participants on the dangers of drug use/abuse and associated illegal activities;

(B) provide information on the effects of drug use/abuse and related illegal activities on personal, family, social, economic and community life;

(C) assist participants in evaluating their own abusive patterns connected with their use of drugs or associated illegal activities; and

(D) assist participants in developing a plan for positive lifestyle changes to reduce chances of being involved in future drug use/abuse and related illegal behaviors.

(14) DWI--An offense relating to driving or operating a motorized vehicle while intoxicated, as described in Penal Code, §§49.04 - 49.08 (relating to Intoxication Offenses).

(15) DWI Approval Representatives--A group of at least one representative from the department, the Department of Public Safety (DPS), the Traffic Safety Section of the Texas Department of Transportation, and the Texas Department of Criminal Justice Community Justice Assistance Division. The purpose of the group of agency representatives is to approve or disapprove the educational program curriculum or curriculum changes, as set forth in the Texas DWI Education Program Administrator/Instructor Manual and required to be used by DWI Education Programs under §453.108 of this title, as well as any rules and rule changes proposed for publication relating to certification standards for DWI Education Programs and their Instructors.

(16) DWI Education Program--A Program provider holding certification from the department demonstrating approval for it to offer, pursuant to Code of Criminal Procedure, Article 42.12, §13(h),

an educational program to persons convicted of a DWI offense and placed on community supervision that is taught exclusively by Instructors certified under this chapter and conducted in accordance with, and as described in, the Texas DWI Education Program Administrator/Instructor Manual authorized and approved by the DWI Approval Representatives and the department under §453.108 of this title. The program is designed to:

(A) present information on the effects of alcohol and other drugs on driving skills;

(B) help participants identify their own individual drinking or drugged driving patterns; and

(C) assist participants in developing a plan to reduce the probability that they will be involved in future DWI behavior.

(17) DWI Intervention Program--A Program provider holding certification from the department demonstrating approval for it to offer, pursuant to Code of Criminal Procedure, Article 42.12, §13(j), an educational program to persons punished under Penal Code, §49.09 (relating to Enhanced Offenses and Penalties) that is taught exclusively by Instructors certified under this chapter and conducted in accordance with, and as described in, the Texas DWI Intervention Program Manual authorized and approved by the department under §453.108 of this title. The program is designed to:

(A) educate participants about chemical dependency and the problems associated with chemical dependency;

(B) provide intensive instruction about specific actions participants can take to prevent future DWI offenses; and

(C) instruct participants about methods and ways to make necessary lifestyle changes in order to prevent alcohol/drug-related problems in other areas of the participants' lives.

(18) In-service--A department-sponsored continuing education seminar, for an applicable Offender Education Instructor certification.

(19) Instructor Applicant--A term describing an individual from the period when the individual submits an application for admission into an Administrator/Instructor certification training workshop until the point where certification is granted or denied.

(20) Instructor Certification Period--That period of time beginning with the date Instructor certification was granted to instruct an applicable Offender Education curriculum, and ending the last day of the same month Instructor certification was granted, two years later.

(21) Minor--A person under the age of 21 years.

(22) Offender Education Program (Program)--An Alcohol Education Program for Minors, Drug Offender Education Program, DWI Education Program, or DWI Intervention Program.

(23) Participant--An individual who attends a department-approved Offender Education Program.

(24) Program Certification Period--For Drug Offender Education Programs, Alcohol Education Programs for Minors, and DWI Intervention Programs, that period of time beginning with the date certification was granted and ending August 31 of every odd-numbered year. For DWI Education Programs, that period of time beginning with the date certification was granted and ending August 31 of every even-numbered year.

(25) Program Headquarters--The primary administrative center of an approved Offender Education Program identified as the business address in the Program's application.

(26) Screening Instrument--A written device approved by the department and required to be administered to each Program participant for the purpose of:

(A) identifying indicators of a potential substance abuse problem; and

(B) making recommendations for further evaluation, where indicated by the screening instrument.

§453.102. Requirement of Program and Instructor Certification and Scope of Rules.

Any entity or individual seeking to operate an approved Offender Education Program, as one of those programs is described in Alcoholic Beverage Code, §106.115 (relating to Attendance at Alcohol Awareness Course; License Suspension); Transportation Code, §521.374 (relating to Educational Program); Code of Criminal Procedure, Article 42.12, §13(h); or Code of Criminal Procedure, Article 42.12, §13(j), must have a current Offender Education Program certificate of approval for the applicable program issued by the department. Each Instructor that teaches any class or course for an Offender Education Program must have a current Instructor certificate issued by the department for the type of Offender Education Program the Instructor is teaching. An Approved Offender Education Program and all of its Instructors shall comply with all requirements of this chapter.

§453.103. Fees.

(a) Fees will be assessed by the department in accordance with the fee schedule set forth below:

(1) initial Offender Education Program application fee--$300;

(2) application fee for new branch site, including a new Program headquarters location in the same county--$5;

(3) Offender Education Program renewal application fee--$225;

(4) branch site renewal application fee--$5; and

(5) certificate replacement fee--$5.

(b) Payment must be in the form of cashier's check, money order, or agency voucher.

(c) Fees paid to the department and any charges for program-related materials are not refundable.

§453.104. Program Instructor Certification.

(a) To become an Instructor for a particular type of Offender Education Program, an individual must be eligible to apply and must apply to become certified as an Instructor for the applicable type of Offender Education Program; be accepted to enroll in and successfully complete the department-approved and sponsored Offender Education Administrator/Instructor training workshop for the applicable Offender Education Program; and be certified by the department as an Instructor for the applicable Offender Education Program.

(b) To be eligible to apply to become certified as an Instructor for a DWI Education Program, Drug Offender Education Program, or Alcohol Education Program for Minors, an individual must:

(1) have a minimum of an associate's degree in the field of psychology, sociology, counseling, social work, criminal justice, education, nursing, health, or traffic safety;

(2) be a licensed chemical dependency counselor (LCDC), registered counselor intern (CI), licensed social worker, licensed professional counselor (LPC), LPC-intern, certified teacher, licensed psychologist, licensed physician or psychiatrist, probation or parole officer,

adult or child protective services worker, licensed vocational nurse, or registered nurse; or

(3) have at least one year of documented experience in case management or education relating to substance abuse and/or mental health.

(c) To be eligible to apply to become certified as an Instructor for a DWI Intervention Program, an individual must:

(1) be an LCDC, registered CI, licensed social worker, LPC, LPC-intern, licensed psychologist, licensed physician or psychiatrist, or possess, at a minimum, an associate's degree in the field of psychology, sociology, counseling, social work, criminal justice, education, nursing, or health; and

(2) have a minimum of two years of documented experience providing direct client services directly related to the applicable internship, licensing, or education documented under subsection (b)(1) of this section to persons with substance abuse problems or mental disorders.

(d) The department will review an Instructor applicant's criminal history and may deny an application at any point based upon a conviction for which denial is authorized under §453.123 of this title (relating to Criminal History Standards).

(e) To become a certified Instructor for a particular type of Offender Education Program, an individual must apply, be accepted to enroll in, and successfully complete the applicable department-approved and sponsored Offender Education Administrator/Instructor training workshop, including achieving a passing score on the participant teaching presentation and the written exam. All Instructor applicants must attend all classes of the training workshop in their entirety.

(f) Any Instructor applicant who does not achieve a passing score on either the participant teaching presentation or the written exam at the Administrator/Instructor training workshop will have one additional opportunity to pass an alternate written exam or participant teaching presentation, as applicable, within 30 days after the date of workshop completion, or as otherwise directed by the department. If the Instructor applicant does not achieve a passing score on the applicable written exam or participant teaching presentation the second time, the Instructor applicant will not have successfully completed the Administrator/Instructor training workshop and must reapply for the applicable training workshop and certification. If the Instructor applicant does not achieve a passing score on both the written exam and the participant teaching presentation at the initial Administrator/Instructor training workshop, the Instructor applicant will not have successfully completed the Administrator/Instructor training workshop and must reapply for the applicable training workshop and certification.

(g) Any Instructor applicant who does not successfully complete the Administrator/Instructor training workshop, to include any permitted retesting, will be required to return the curriculum manual to the department by no later than the end of the class session at which unsuccessful completion of the course is determined or at the time of retest, whichever is later. Instructor applicants shall bring the manual with them to each class and to each retest. In no event shall the manual be used except by certified Instructors for instruction in approved Offender Education Programs, or by authorized Instructor trainers.

(h) The department may deny the application at any time of an Instructor applicant who engages or has engaged in conduct that would provide a basis for action under §453.122 of this title (relating to Action Against an Applicant or Certification Holder) or §453.123 of this title. An Instructor applicant may be deemed to have failed to successfully complete the applicable Administrator/Instructor training workshop and the application denied based upon conduct during, or at the time of, the training workshop that could form the basis for action under §453.122 of this title. The Instructor applicant shall agree in writing to abide by the requirements of this chapter and to refrain from conduct that would form a basis for action under §453.122 or §453.123 of this title, and shall abide by these rules and that agreement, both as an Instructor applicant and, if certified, as a certified Instructor.

(i) An Instructor certification shall only authorize the Instructor to instruct the particular type of Offender Education Program for which it is issued. A certified Instructor shall utilize only the Offender Education Program curriculum approved for the particular type of Offender Education Program for which the Instructor is certified, and shall utilize the approved curriculum only for an Offender Education Program that holds applicable certification from the department.

(j) Administrators and Instructors are required to report, in writing, any felony or misdemeanor conviction against themselves or other certified Instructors. This report must be submitted to the department within ten days of learning of the conviction.

(k) Instructors must notify the department within 30 days of any change in Instructor name, address, telephone number, or electronic mail address.

§453.105. Instructor Certification Renewals.

(a) Instructor certifications and renewals for all Offender Education Programs are for two years. Absent any basis for action under §453.122 of this title (relating to Action Against an Applicant or Certification Holder) or §453.123 of this title (relating to Criminal History Standards), an Instructor applicant will be certified upon successful completion of the training workshop and any retesting, and the certification will expire two years later on the last day of the month in which certification was obtained.

(b) To renew an Instructor's certification, the Instructor will be required to submit to the department, prior to the certification expiring, complete information, on a form prescribed by the department, demonstrating compliance with the teaching and continuing education requirements for the applicable Offender Education Program curriculum.

(1) Each Drug Offender Education Instructor must teach a minimum of four complete Drug Offender Education courses and attend at least one department-sponsored Drug Offender Education Instructor in-service during the Instructor's certification period, and each subsequent Instructor certification period. If substantial intervening changes are made to the Drug Offender Education curriculum, or significant updates are required to curriculum material, Instructors for Drug Offender Education shall attend any additional department-sponsored Drug Offender Education Instructor in-service or special meeting regarding which the department sends them notice. Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may submit 20 hours of continuing education that is directly drug-related and approved by the department's Offender Education Group, in lieu of attending the in-service. A request for approval of these continuing education hours must be submitted to the department at least 30 days prior to the date of the Instructor's Drug Offender Education certification expiration. Continuing education hours obtained in a department-sponsored Drug Offender Education Instructor in-service may not be used to fulfill the continuing education requirement of another Offender Education certification.

(2) Each Alcohol Education Program for Minors Instructor shall teach a minimum of four complete Alcohol Education Program for Minors courses and attend at least one department-sponsored Alcohol Education Program for Minors Instructor in-service during the

Instructor's certification period, and each subsequent Instructor certification period. If substantial intervening changes are made to the Alcohol Education Program for Minors curriculum, or significant updates are required to curriculum material, Instructors for Alcohol Education Program for Minors shall attend any additional department-sponsored Alcohol Education Program for Minors Instructor in-service or special meeting regarding which the department sends them notice. Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may submit 20 hours of continuing education that is directly alcohol-related and approved by the department's Offender Education Group, in lieu of attending the in-service. A request for approval of these continuing education hours must be submitted to the department at least 30 days prior to the date of the Instructor's Alcohol Education Program for Minors certification expiration. Continuing education hours obtained in a department-sponsored Alcohol Education Program for Minors Instructor in-service may not be used to fulfill the continuing education requirement of another Offender Education certification.

(3) Each DWI Education Instructor shall teach a minimum of four complete DWI Education courses and attend at least one department-sponsored DWI Education Instructor in-service during the DWI Education Instructor's certification period, and each subsequent Instructor certification period. If substantial intervening changes are made to the DWI Education curriculum, or significant updates are required to curriculum material, Instructors for DWI Education shall attend any additional department-sponsored DWI Education Instructor in-service or special meeting regarding which the department sends them notice. Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may submit 20 hours of continuing education that is directly alcohol-related and approved by the department's Offender Education Group, in lieu of attending the in-service. A request for approval of these continuing education hours must be submitted to the department at least 30 days prior to the date of the Instructor's DWI Education certification expiration. Continuing education hours obtained in a department-sponsored DWI Education Instructor in-service may not be used to fulfill the continuing education requirement of another Offender Education certification.

(4) Each DWI Intervention Instructor shall teach a minimum of two complete DWI Intervention courses and attend at least one department-sponsored DWI Intervention Instructor in-service during the Instructor's certification period, and each subsequent Instructor certification period. If substantial intervening changes are made to the DWI Intervention curriculum, or significant updates are required to curriculum material, Instructors for DWI Intervention shall attend any additional department-sponsored DWI Intervention Instructor in-service or special meeting regarding which the department sends them notice. Instructors who are licensed chemical dependency counselors, licensed professional counselors, licensed psychologists, licensed psychiatrists, or licensed social workers may submit 20 hours of continuing education that is directly alcohol-related and approved by the department's Offender Education Group, in lieu of attending the in-service. A request for approval of these continuing education hours must be submitted to the department at least 30 days prior to the date of the Instructor's DWI Intervention certification expiration. Team teaching, with no more than two certified instructors, may be counted towards the fulfillment of the teaching requirement. Continuing education hours obtained in a department-sponsored DWI Intervention Instructor in-service may not be used to fulfill the continuing education requirement of another Offender Education certification.

(c) If an Instructor's certification expires prior to submission of a complete renewal application that demonstrates compliance with all renewal requirements, the Instructor must reapply and successfully complete the applicable initial Administrator/Instructor training workshop again to become certified to instruct for the applicable Offender Education Program.

§453.106. Program Application and Certification.

(a) An applicant seeking certification as an approved Offender Education Program shall submit the initial application fee and a complete application, on a form prescribed by the department. The application must identify an individual who will act as Program Administrator who is a certified Instructor in good standing for the applicable type of Offender Education Program, and who is authorized to act on behalf of the proposed certified Program in all respects relating to compliance with this chapter. The applicant seeking certification as an approved Offender Education Program shall agree in writing, through its Administrator, that the Offender Education Program and its personnel will abide by the requirements of this chapter and refrain from conduct that would form a basis for action under §453.122 of this title (relating to Action Against an Applicant or Certification Holder) or §453.123 of this title (relating to Criminal History Standards). The applicant Offender Education Program and, if certified, the certified Offender Education Program and its personnel shall abide by the agreement and by the rules in this chapter.

(b) If an applicant seeking certification as an approved Offender Education Program has met all requirements for the applicable type of Offender Education Program, as set forth in this chapter, and no basis for denial of the application exists under §453.122 or §453.123 of this title, the department will issue a Program certificate for the applicable type of Offender Education Program and its applicable Program Certification Period. An Alcohol Education Program for Minors, Drug Offender Education Program, and DWI Intervention Program's certification becomes effective on the first day of the month following the month the complete application was approved and expires on August 31 of every odd-numbered year. A DWI Education Program's certification becomes effective on the first day of the month following the month the complete application was approved and expires on August 31 of every even-numbered year.

(c) Prior to offering a course for which an Offender Education Program is certified, at a location other than the headquarters, in the same or adjacent county, the Program shall submit a written request to the department, with the applicable branch site fee. If approved, the department will then issue a certificate authorizing the Program to offer the applicable course at that approved branch site.

(d) The Offender Education Program applicant shall provide the department with a physical address, mailing address and telephone number for its headquarters and a physical address for each site where the applicable course will be conducted, as well as a local or toll-free telephone number for each site that participants may use to register and obtain information. The Offender Education Program applicant and certification holder shall notify the department in writing within 30 days of any change in Administrator, headquarters or site address, telephone number, or electronic mail address.

(e) A certificate for the applicable Offender Education Program shall be prominently displayed at each location where services are provided, including branch sites. The Instructor's certificate shall be prominently displayed during each class taught by the Instructor.

(f) A holder of a current Offender Education Program certificate must submit a separate application and initial application fee and obtain a separate certification if it is seeking certification as an approved Offender Education Program to offer the applicable educational program at a site that is not located in the same or adjacent county as the Program headquarters of the then-certified Offender Education Pro-

gram. The new application shall designate a Program Administrator and Program headquarters, and may establish branch sites in accordance with the provisions of this section.

(g) A separate application and initial application fee for certification as an approved Offender Education Program must be submitted and a new certification obtained to move the Program headquarters to a location that is not in the same county as the Program's current headquarters. The original certificate for the current Program must be returned to the department before a new certification will be issued. A program requesting to move its headquarters to a new location in the same county as the current headquarters must submit that request in writing to the department along with the applicable fee and the original certificate for the current headquarters.

§453.107. Program Expiration and Renewal.

(a) At least 30 days before the certificate's expiration date, an Offender Education Program seeking renewal shall submit the Program renewal fee and the Program renewal form prescribed by the department.

(b) Applicants for Program renewal must demonstrate compliance with applicable rules in this chapter and applicable program requirements.

(c) Renewal of a Drug Offender Education Program, Alcohol Education Program for Minors, or DWI Intervention Program becomes effective on September 1 of the year of renewal, and expires on August 31 of every odd-numbered year. Renewal of a DWI Education Program becomes effective on September 1 of the year of renewal and expires on August 31 of every even-numbered year.

(d) Programs that fail to submit a complete renewal application and pay the renewal fee before the Program's expiration date will no longer hold a current certification to provide the applicable educational program, and must submit an initial Program application and fee as required in §453.106 of this title (relating to Program Application and Certification) to obtain certification as an approved Offender Education Program.

§453.108. Program Content and Materials.

(a) Approved Offender Education Programs shall use the most up-to-date version of the uniform curricula and of any screening instrument approved by the department.

(b) The following curricula are approved:

(1) the Texas Drug Offender Education Program Administrator/Instructor Manual;

(2) the Alcohol Education Program for Minors Administrator/Instructor Manual;

(3) the Texas DWI Education Program Administrator/Instructor Manual; and

(4) the Texas DWI Intervention Administrator/Instructor Program Manual.

(c) The curricula are available for review free of charge at the department's administrative offices located at 8407 Wall Street in Austin, Texas.

(d) Any supplemental media used in an Offender Education Program must have prior written approval from the department. The Offender Education Program seeking approval must demonstrate that it meets the following minimum conditions for approval of supplemental media:

(1) the Program must still use all media required by the applicable approved curriculum for each module;

(2) the Program, with use of the supplemental media, must exceed the minimum number of classes and hours of instruction required per course by the length of any supplemental media; and

(3) the content of any supplemental medium must relate directly to the objectives of the curriculum module in which it is used.

§453.109. Uniform Certificates of Course Completion.

(a) All certified Offender Education Programs shall provide each participant who successfully completes the applicable Offender Education Program, within five days of successful completion, a serially numbered uniform certificate of course completion required and designated for such use by the department. If an exit interview is required, the course shall not be deemed to be successfully completed and a certificate of course completion shall not be issued until the exit interview has been conducted.

(b) All approved Offender Education Programs shall maintain an ascending numerical accounting record of all issued and un-issued certificates.

(c) The applicable Offender Education Program, Administrator, and course Instructor are responsible for ensuring that an original certificate of completion is issued to each participant who successfully completes the course. All Offender Education Programs shall retain one copy for the Program's files. DWI Education Programs and DWI Intervention Programs shall also forward the DPS copy to DPS and notify the appropriate community supervision and corrections department, within ten working days of course completion. If the participant's deadline for completing the course is earlier than ten working days after the participant's successful completion of the course, the DWI Education Program or DWI Intervention Program, as applicable, shall, by no later than the participant's deadline, forward the DPS copy of the certificate of completion to DPS and notify the appropriate community supervision and corrections department, if requested by the participant, DPS, the appropriate community supervision and corrections department, or the court.

(d) Each Offender Education Program shall develop procedures for issuing duplicate certificates. The procedures shall ensure that the duplicate certificate is a new certificate, is clearly identified as being a duplicate of a previously-issued certificate, and includes the control number of the previously-issued certificate. The Offender Education Program shall indicate at the bottom of the class roster on which the participant's original control number was recorded that a duplicate certificate was issued and shall show the new control number and date of issuance for the duplicate certificate.

(e) If an Offender Education Program allows its certification to expire or otherwise loses its certification, it shall, within 30 days after expiration or other termination of the certification, return all unused certificates of completion to the department's Offender Education Group.

§453.110. Classroom Facilities and Equipment.

(a) Offender Education Programs and Instructors shall conduct all classes in appropriate classroom facilities and settings which are in compliance with the Americans with Disabilities Act, 42 United States Code, §12101 et seq. The classrooms and setting shall be conducive to study and shall have:

(1) a sufficient number of tables or desks to accommodate each participant without crowding;

(2) a number of seats sufficient to seat each participant;

(3) sufficient lighting; and

(4) appropriate acoustics and climate control.

(b) Offender Education Programs and Instructors shall not conduct class sessions at a personal residence.

(c) Classroom facilities shall be easily accessible to all class participants.

(d) Audiovisual equipment shall be in good working order and in good condition for use in class instruction.

(e) Television monitors and projection screens must be at least 25 inches diagonal and videos and slides/transparencies must be maintained in a high quality condition.

(f) Slides/transparencies and videos shall be displayed in a manner which produces a clear image and allows all participants to have an unobstructed view.

(g) Offender Education Programs and Instructors shall not videotape or otherwise record or broadcast any portion of any Offender Education course.

§453.111. Program Administration.

(a) An Offender Education Program is responsible for all aspects of Program compliance with this chapter, including any noncompliance related to the conduct of a Program Instructor, Administrator, owner, or other personnel. Each Offender Education Program shall designate a Program Administrator who shall ensure the Program's compliance with the administrative requirements of this section and the proper operation of the Program in compliance with all requirements of this chapter. Nothing in this section shall limit the concurrent responsibility of an Administrator or Instructor for that individual's own conduct.

(b) Program Administrators shall be in good standing as a certified Instructor for the applicable program and shall meet all of the requirements of program Instructors.

(c) An Offender Education Program shall set definite and reasonable course fees. Course fees shall not be assessed on a class-by-class basis.

(d) An Offender Education Program shall maintain, and make available upon request, written course schedules that include the dates, times, and locations where courses will be held, and the fees charged by the Program.

(e) An Offender Education Program shall schedule at least one course each quarter.

(f) An Offender Education Program, and its Administrator and Instructors, shall maintain documentation necessary to demonstrate compliance with all applicable requirements of this chapter. The Offender Education Program and its personnel shall allow the department access at any reasonable time, including while an Offender Education class is being taught, to any of its Program sites for auditing and monitoring purposes. In addition, unless otherwise prohibited by law, the Program, its Administrator, and Instructors shall make available or provide to the department upon request at any reasonable time, any of its documents or records, including all records of any Instructor or Administrator, for audit and monitoring purposes. The Offender Education Program, its Administrator, and its Instructors shall cooperate with department staff and allow department staff to interview Program personnel and participants.

(g) An Offender Education Program shall notify the department in writing within 30 days of any change in the Program's headquarters or branch site address, telephone number, electronic mail address, or change in the Program Administrator or Instructor(s).

(h) An Offender Education Program that does not have a currently certified Program Administrator on record with the department will be placed on inactive status, notified of that status, and will not be authorized to offer the applicable Offender Education course until the Offender Education Program designates a new, currently certified, Program Administrator, provides written notice to the department of the designation, and receives written acknowledgment from the department of its reactivated status.

(i) If an Offender Education Program or Instructor is in a position to or does provide Offender Education referral information to an individual who is required to attend an Offender Education course, the Offender Education Program or Instructor providing the referral information must provide the department's phone number and web address, advise the individual concerning the individual's choice to attend any Offender Education Program certified by the department, and may not require or otherwise attempt to influence an individual to choose a particular Offender Education Program. This section does not prevent a Program or Instructor from providing information particularized to the Program or to the Instructor's own Program or course when a prospective participant is specifically requesting information about that particular Program or the Instructor's own Program or course.

§453.112. Recordkeeping and Reporting.

(a) An Offender Education Program shall collect and maintain all required data on each course participant.

(1) All Offender Education Programs shall collect and maintain the following information:

(A) name;

(B) street address, city, and zip code;

(C) date of birth;

(D) sex;

(E) driver's license number (if any);

(F) grade in school or educational level achieved;

(G) present employment;

(H) date of enrollment;

(I) date of course completion;

(J) dates and attendance record for each class session of the course completed;

(K) certificate of completion number; and

(L) criminal case cause number.

(2) Drug Offender Education Programs and DWI Education Programs shall also collect and maintain the following information:

(A) individual pre- and post-course test scores;

(B) average pre- and post-course test scores of course participants;

(C) aggregate percent of knowledge increase between pre- and post-course test scores;

(D) each course participant's screening instrument;

(E) each course participant's screening instrument indicator code/score; and

(F) any referral recommendations made to a course participant.

(3) In addition to the requirements in paragraph (1) of this subsection, DWI Intervention Programs shall also collect and maintain:

(A) participants' blood alcohol concentration at time of arrest (if known);

(B) the number of prior alcohol/drug-related arrests;

(C) documentation that the agreement form, Alcoholics Anonymous attendance, family/significant other attendance, sessions with individual participants, and exit interview requirements were completed as outlined in the Texas DWI Intervention Administrator/Instructor Program Manual;

(D) each course participant's screening instrument;

(E) each course participant's screening instrument indicator code/score; and

(F) any referral recommendations made to a course participant.

(4) In addition to the requirements in paragraph (1) of this subsection, Alcohol Education Program for Minors shall also collect and maintain:

(A) the name of the referring judge;

(B) individual pre- and post-course test scores;

(C) average pre- and post-course test scores of course participants; and

(D) aggregate percent of knowledge increase between pre- and post-course test scores.

(b) An Offender Education Program shall retain each course roster and a copy of each issued certificate of completion for at least three years from the date of course completion. All other course records shall be retained for a minimum of one year from the date of course completion.

(c) An Offender Education Program shall submit the following items to the department on the annual report form by September 15 of each year:

(1) total number of participants registered for each Program course during the annual reporting period;

(2) total number of participants successfully completing each Program course during the annual reporting period;

(3) total number of courses conducted during the annual reporting period;

(4) names of all certified Instructors employed by the Offender Education Program and number of courses conducted by each Instructor during the annual reporting period;

(5) driver's license numbers of all participants, or, in the absence of a driver's license number, the date of birth of each participant completing the course;

(6) average percent of knowledge increase across all courses conducted during the annual reporting period from pre-course tests to post-course tests administered (not required for DWI Intervention Programs); and

(7) percent of total participants during the annual reporting period indicating significant substance abuse problems, based upon the numerical score on the approved screening instrument required to be administered (not required for Alcohol Education Program for Minors).

(d) An Offender Education Program that does not file a timely annual report with the department will be put on inactive status, notified of that status, and will not be authorized to offer the applicable Offender Education course until the department receives the Offender Education Program's annual report and the Program receives written acknowledgment from the department of its reactivated status.

§453.113. General Program Operation Requirements.

(a) All Offender Education Programs shall use the applicable curriculum approved in §453.108 of this title (relating to Program Content and Materials), including all required videos, slides or transparencies, participant workbooks, booklets, and other resources or written materials. The applicable curriculum must be presented in the prescribed manner and sequence.

(b) All courses shall be taught by a certified Instructor for the applicable Offender Education Program. Each Instructor shall be physically present in the classroom with all of the participants for each class. A single Instructor must teach the entire course for all Offender Education Programs, with the exception of DWI Intervention Programs, which may allow team-teaching utilizing no more than two certified Instructors.

(c) Offender Education Programs shall require participants to attend all class sessions within a course in the proper sequence.

(d) The Program shall make provisions for persons unable to read and/or speak English. All classes in a single course shall be taught in the same language.

(e) The Program shall screen each participant and offer appropriate referral information to the participant, based upon the numerical score and accompanying referral recommendations on the approved screening instrument required to be administered. The screening instrument shall be administered by the Program Administrator or course Instructor, or under their direct supervision.

(f) The Administrator or course Instructor for each Offender Education Program shall make available a current listing or roster of available chemical dependency counseling and treatment resources in the area to each participant whose numerical score and accompanying referral recommendations on the approved screening instrument required to be administered indicate a potential substance abuse problem requiring further evaluation.

(g) All required registration, initial data collection, and screening procedures shall be completed before commencement of the first class session.

(h) At the end of each course, the course Instructor for each Offender Education Program shall administer a participant course evaluation.

(i) The course Instructor for all Offender Education Programs shall conduct an exit interview with each participant, as outlined in the applicable educational program manual.

§453.114. Additional Program Requirements for Drug Offender Education Programs.

(a) Each Drug Offender Education Program shall:

(1) conduct the prescribed drug offender education course a minimum of two times during each annual reporting period;

(2) provide a minimum of five class sessions of instruction per course;

(3) conduct class sessions which are not longer than three hours in length, and not shorter than two hours in length;

(4) conduct no more than one class session per day; and

(5) conduct courses and each class with no more than 30 participants and with no fewer than three participants.

(b) Each Drug Offender Education Program shall administer and evaluate pre- and post-course test instruments for each participant.

§453.115. Additional Requirements for Alcohol Education Program for Minors.

(a) Each Alcohol Education Program for Minors shall:

(1) conduct the prescribed alcohol education course a minimum of two times during each annual reporting period;

(2) provide a minimum of six hours of class instruction per course;

(3) conduct class sessions which are not longer than three hours in length;

(4) conduct no more than one class session per day; and

(5) conduct courses and each class with no more than 25 participants and with no fewer than three participants (not including parents and guardians).

(b) The Program shall administer and evaluate pre- and post-course test instruments for each participant.

§453.116. Requirements for DWI Education Programs.

(a) Each DWI Education Program shall:

(1) conduct the prescribed DWI education course a minimum of two times during each annual reporting period;

(2) provide a minimum of 12 hours of instruction per course;

(3) provide no more than four hours of instruction in any one day; and

(4) conduct courses and each class with no more than 30 participants and with no fewer than three participants.

(b) The Program shall administer and evaluate pre- and post-course test instruments for each participant.

(c) Within ten working days after completion of the course, the Instructor shall notify the appropriate community supervision and corrections department and forward the DPS copy of the certificate of completion to DPS. If the participant's deadline for completing the course is earlier than ten working days after the participant's successful completion of the course, the DWI Education Program or DWI Intervention Program, as applicable, shall, by no later than the participant's deadline, forward the DPS copy of the certificate of completion to DPS and notify the appropriate community supervision and corrections department, if requested by the participant, DPS, the appropriate community supervision and corrections department, or the court.

§453.117. Additional Requirements for DWI Intervention Programs.

(a) Each DWI Intervention Program shall:

(1) conduct the prescribed DWI intervention course a minimum of one time during each annual reporting period;

(2) provide a minimum of 30 hours of class instruction per course;

(3) conduct class sessions which are not longer than three hours in length and not shorter than two hours in length;

(4) conduct no more than one class session per day;

(5) conduct no more than two class sessions per week;

(6) conduct courses and each class with no more than 15 participants and with no fewer than three participants;

(7) provide make-up class sessions for a maximum of two excused absences; and

(8) conduct a minimum of two sessions with each participant individually and an individual exit interview with each participant.

(b) Within ten working days after completion of the course the Instructor shall notify the appropriate community supervision and corrections department and forward the DPS copy of the certificate of completion to DPS. If the participant's deadline for completing the course is earlier than ten working days after the participant's successful completion of the course, the DWI Education Program or DWI Intervention Program, as applicable, shall, by no later than the participant's deadline, forward the DPS copy of the certificate of completion to DPS and notify the appropriate community supervision and corrections department, if requested by the participant, DPS, the appropriate community supervision and corrections department, or the court.

§453.118. Confidentiality.

All Offender Education Programs shall abide by and obtain any consent to disclosure required by applicable Federal and State laws regarding confidentiality of patient/client records including, as applicable and without limitation, 42 United States Code, §290dd-2; 42 Code of Federal Regulations, Part 2, and Health and Safety Code, Chapter 611.

§453.119. Discrimination Prohibited.

Offender Education Programs shall be conducted without discrimination based upon the gender, race, religion, age, national or ethnic origin, or disability of the participant.

§453.120. Participant Complaints.

(a) Offender Education Programs shall establish procedures to resolve participant complaints.

(b) At each site where an Offender Education Program conducts a course, the Offender Education Program, Administrator, and course Instructor shall ensure that a sign is prominently displayed containing the name, current mailing address, and current telephone number of the department and a statement notifying all persons that any complaints against the Program or any of its personnel may be directed to the department's Offender Education Group.

(c) Upon verbal or written request from the department, an Offender Education Program, Administrator, Instructor, or any person associated with the Program, shall promptly provide complete and concise information about the Program's complaint procedures, including procedures for complaining directly to the department, and shall cooperate with the department and furnish requested information concerning any department investigation of a complaint.

§453.121. Exceptions.

(a) If a certified Offender Education Program cannot comply with specific standards because of alleged difficulty or hardship due to extenuating circumstances and makes the showing required under subsection (b) of this section, the department may grant an exception to specific rule provisions of this chapter, or to specific requirements of the curricula required to be used under §453.108 of this title (relating to Program Content and Materials).

(b) To request an exception, the Offender Education Program shall submit a written request to the department stating:

(1) the name, headquarters address, and phone number of the Offender Education Program, and the branch site address(es) for which the requested exception(s) is being sought;

(2) the specific rule provision(s) or curriculum requirement(s) from which exception is sought;

(3) a clear statement of the difficulty or hardship and extenuating circumstances the applicant for the exception claims and a justification for the exception sought;

(4) how the intent of the rule provision(s) and/or curriculum requirement(s) sought to be excepted will be met;

(5) how the effective and efficient operation of the particular Offender Education Program or branch sites seeking the exception will be maintained; and

(6) how the health, safety, and welfare of Program participants will be protected under the proposed exception(s).

(c) The department will send the Program written notice of its decision. A decision to grant or deny an exception is final and not subject to review or appeal.

(d) Unless an earlier expiration date is specified in the department approval granting an exception, all exceptions granted will expire at the end of the Program certification period.

(e) No exceptions will be granted for statutory requirements and, except as specified in this chapter, no exceptions will be granted for Instructor teaching, in-service, or continuing education requirements.

§453.122. Action Against an Applicant or Certification Holder.

(a) In addition to the bases for adverse action set forth in §453.123 of this title (relating to Criminal History Standards), the department may deny, refuse to renew, or revoke the application or certification of an offender education Instructor or of an Offender Education Program if the applicant for Program or Instructor certification, or the Instructor or Program certification holder, or a Program owner, Instructor, Administrator, or staff member:

(1) fails or has failed to comply with applicable requirements under this chapter or any other applicable statute or department rule;

(2) falsifies, submits or maintains, or has falsified, submitted, or maintained any substantially false, inaccurate, or incomplete documentation required under this chapter or related to the applicable Offender Education Program. This includes submission of any false or misleading statements in an application or other statement or correspondence to the department;

(3) engages or has engaged in conduct or promotes, permits, or has promoted or permitted one or more participants to engage in conduct inconsistent with behaviors and principles taught or advocated under the curriculum prescribed under §453.108 of this title (relating to Program Content and Materials);

(4) attends or has attended any Instructor training, instructs or is present at any class in an Offender Education Program, or performs duties related to an Offender Education Program while under the influence or impaired by alcohol or controlled substances, or provides one or more course participants with, or permits or encourages one or more course participants to use, any alcohol or controlled substance;

(5) engages or has engaged in conduct toward another that is violent or that constitutes abuse, neglect, or exploitation under applicable law; or

(6) engages or has engaged in conduct with respect to a participant that is inequitable, discriminatory, degrading, disrespectful, retaliatory, of a romantic or sexual nature, or which otherwise is or may be harmful to the health, safety, or welfare of a participant, to participants generally, or to the public.

(b) When sufficient evidence exists to indicate that action against a Program or Instructor applicant or certification holder is authorized under this section, the department may propose to take action under this section and shall give written notice to the person against whom action is proposed. The notice shall state the alleged violation(s) and the action proposed to be taken.

(c) The notice will be given in accordance with §453.124 of this title (relating to Procedures for Adverse Action Against a Program or Instructor Certificate), and will provide notice of the opportunity for a hearing on the allegations and/or proposed action. If a hearing is timely requested and the proposed action is not resolved by informal disposition, as provided for in §453.124 of this title, a hearing will be held in accordance with the provisions of the Administrative Procedure Act, Government Code, Chapter 2001; the Rules of Procedure for the State Office of Administrative Hearings, 1 Texas Administrative Code Chapter 155; and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(d) A Program or Instructor whose certification has been denied, initially or at renewal, or revoked is not eligible to apply for Instructor or Program certification for any Offender Education Program for a period of at least two years from the date of denial or revocation. If the Program or Instructor thereafter reapplies, the Program or Instructor shall be required, with the application, to make an affirmative showing of facts and circumstances that demonstrate that the facts and circumstances that led to revocation, denial, or a refusal to renew no longer serve as a basis for denial. The department may consider the applicant's affirmative showing, as well as an applicant or certification holder's history of certification denial, refusal to renew, or revocation, and the facts underlying such action(s), in determining whether to grant or deny a Program or Instructor application.

(e) Where an applicant or certification holder has engaged in conduct outlined under subsection (a) of this section for which the department does not propose to take action under subsection (b) of this section, the department may send the applicant or certification holder a non-disciplinary letter providing the applicant or certification holder with an opportunity to cure or otherwise address the alleged conduct or noncompliance under subsection (a) of this section. Failure to submit and implement a corrective action plan adequately addressing the alleged conduct or noncompliance within the timeframe requested by the department may result in a proposal for action under subsection (b) of this section.

§453.123. Criminal History Standards.

(a) An applicant for or holder of an initial or renewal certificate as an Offender Education Program or Instructor shall be subject to criminal history checks by the department.

(b) The department may suspend or revoke any existing Offender Education Program certificate or deny an Offender Education new or renewal certificate based upon the person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an Offender Education Program, its Instructors, or its personnel.

(c) The department may suspend or revoke an existing Offender Education Instructor certificate, deny an Instructor new or renewal certificate, or deny to an Instructor applicant the opportunity to be examined for an Instructor certificate based upon the person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the applicable type of Offender Education Program or an Instructor for that Program.

(1) In considering whether a criminal conviction directly relates to an Offender Education Program or Instructor, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes of the applicable Offender Education Program or Instructor certification. The following felonies and misdemeanors relate to an Offender Education Program or Instructor certificate because these criminal offenses adversely reflect on the tendency or ability of an Offender Education Program or Instructor to act capably and with integrity and professionalism under the certificate, to uphold the public trust, and/or to protect the health and safety of participants:

(i) any misdemeanor or felony offense involving moral turpitude by statute or common law;

(ii) a misdemeanor or felony offense under various titles of the Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10); and

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4); and

(iii) any other misdemeanor or felony offense that adversely reflects on the tendency or ability of the applicable Offender Education Program or Instructor applicant or certification holder to act with integrity and professionalism under the certificate, to uphold the public trust, and/or to protect the health and safety of participants/participants.

(C) the extent to which the applicable certificate might offer an opportunity to engage in further criminal history activity of the same type as that in which the person previously has been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of an Offender Education Program or Instructor. In making this determination, the department will consider the criteria outlined in Occupations Code, §53.023 (relating to Additional Factors for Licensing Authority to Consider).

(2) The misdemeanors and felonies listed in paragraph (1)(B) of this subsection are not exclusive in that the department may consider other particular crimes in special cases in order to promote the intent of this chapter; Occupations Code, Chapter 53; and this section.

(d) The department will give written notice to the person that the department intends to deny, suspend, or revoke the certificate. The notice will be given in accordance with §453.124 of this title (relating to Procedures for Adverse Action Against a Program or Instructor Certificate), and will provide notice of the opportunity for a formal hearing on the allegations and/or proposed action. If a hearing is timely requested and the proposed action is not resolved by informal disposition, as provided for in §453.124 of this title, a hearing will be held in accordance with the provisions of the Administrative Procedure Act, Government Code, Chapter 2001; the Rules of Procedure for the State Office of Administrative Hearings, 1 Texas Administrative Code Chapter 155; and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures).

(e) If the department denies, suspends, or revokes a certification under this section after hearing, the department shall give the person written notice:

(1) of the Order reflecting the reasons for the decision;

(2) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas for review of the evidence presented to the department and its decision;

(3) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable; and

(4) of the earliest date the person may appeal.

(f) If the department denies or revokes a certification under this section, the affected person shall not be eligible to apply for Instructor or Program certification for any Offender Education Program for a period of at least two years from the date of denial or revocation. If the Program or Instructor thereafter reapplies, the standards and procedures set forth in this section will apply to a determination at that time. In addition, the Program or Instructor shall be required, with the application, to make an affirmative showing of facts and circumstances that demonstrate that the facts and circumstances that led to revocation, denial, or a refusal to renew no longer serve as a basis for denial. The department may consider any facts relevant to its determination in deciding whether the new application should be granted.

§453.124. Procedures for Adverse Action Against a Program or Instructor Certificate.

(a) The department, upon determination that grounds may exist to take action against an Offender Education Program or Instructor applicant or certification holder under §453.122 of this title (relating to Action Against an Applicant or Certification Holder) or §453.123 of this title (relating to Criminal History Standards), will issue a notice to the affected person of the proposed action. The notice will be sent via regular first-class and certified mail to the address of record of the affected person and will contain:

(1) a statement of the action the department intends to take;

(2) an explanation of the factual allegations forming the basis for the action the department intends to take;

(3) a reference to the legal basis for the intended action, with citations to applicable statutes and rules;

(4) an explanation of the affected person's right to request a hearing, to be held in accordance with the Administrative Procedure Act, Government Code, Chapter 2001; the Rules of Procedure for the State Office of Administrative Hearings, 1 Texas Administrative Code Chapter 155; and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures);

(5) the procedure by which an affected person may accept the proposed action or request a hearing, either exclusive of or in addition to an informal conference; and

(6) a notice that, if the affected person does not request a hearing on or before the 20th day after receiving the notice, the allegations will be deemed to be true and the department will issue a default order implementing the proposed action.

(b) Within 20 days after receiving the notice, the affected person shall either accept the proposed action and findings or request, either exclusive of or in addition to an informal conference, an administrative hearing, to be held in accordance with the Administrative Procedure Act, Government Code, Chapter 2001; the Rules of Procedure for the State Office of Administrative Hearings, 1 Texas Administrative Code Chapter 155; and §§1.21, 1.23, 1.25, and 1.27 of this title. It is a rebuttable presumption that the notice was received three days after mailing of the notice. If a person who is offered the opportunity for a hearing fails to request a hearing within the prescribed time for making such a request, the person is deemed to have waived the hearing and the allegations will be deemed to be true and the proposed action taken

by default. A request for hearing is deemed to be timely if it is filed with the department or postmarked on or before the 20th day after the affected person receives the notice.

(c) The department shall implement a final order to suspend a certificate issued under this chapter for failure to pay child support, as provided for by Family Code, Chapter 232.

(d) If the affected person requests an informal conference, an opportunity will be given to the affected person to show compliance with the requirements of law necessary for retention of the certificate. A determination will be made whether the matters in controversy can be resolved without further proceedings, including by agreed order. If the affected person fails to appear at a scheduled informal conference, the department may deem that person to have waived the right to an informal conference and may proceed to hearing, if a hearing has been requested.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2009.

TRD-200901076
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 106. PERMITS BY RULE

The Texas Commission on Environmental Quality (commission, agency, or TCEQ) proposes the repeal of §§106.101, 106.103, 106.121, 106.123, 106.228, 106.282, 106.291, 106.312, and 106.413.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The 76th Legislature passed Senate Bill (SB) 766 in 1999. In general, SB 766 recategorized the New Source Review authorizations under the Texas Clean Air Act (TCAA). Prior to the revisions by SB 766, the TCAA authorized the commission to issue permits for the construction or modification of facilities that will emit air contaminants; standard permits adopted by rule; and exemptions from permitting, also adopted by rule. SB 766 modified this structure by authorizing the commission to issue standard permits using a process that does not require each standard permit to be in a rule. SB 766 provided a new name, permits by rule (PBRs), for authorization of certain types of facilities that would not make a significant contribution of air contaminants into the atmosphere. Finally, the commission was authorized to develop criteria for facilities that emit a de minimis amount of air contaminants that do not need preconstruction authorization.

30 TAC §116.119, De Minimis Facilities or Sources, was subsequently adopted by the commission and became effective in September 2000. Section 116.119 establishes four categories of facilities that do not require authorization. The first category is defined as those facilities or sources included on the list entitled, "De Minimis Facilities or Sources."

As stated in §116.119(c), the executive director may amend the list of De Minimis Facilities or Sources as necessary, taking into consideration the following: typical operating scenarios; typical design and location; the types and rates of air contaminants emitted; engineering judgment and experience; and toxicological or health impacts. A proposal to amend the list of De Minimis Facilities or Sources was published in the *Texas Register* on December 21, 2007 (32 TexReg 9839). The proposal added facilities authorized by certain PBRs that have no control, recordkeeping, or registration requirements. In May 2008, the list of De Minimis Facilities or Sources was amended to include nine types of facilities permitted by rule. This action would eliminate duplication and provide a clear regulatory structure by repealing the nine PBRs listed under §§106.101, 106.103, 106.121, 106.123, 106.228, 106.282, 106.291, 106.312, and 106.413, since they are currently listed as De Minimis Facilities or Sources under §116.119.

SECTION BY SECTION DISCUSSION

Subchapter C: Domestic and Comfort Heating and Cooling, §106.101 and §106.103

The commission proposes to repeal §106.101, Domestic Use Facilities and §106.103, Air Conditioning and Ventilation Systems. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, repealing §106.101 and §106.103 would eliminate duplication and provide a clear regulatory structure. A facility currently authorized under one of these PBRs may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

Subchapter D: Analysis and Testing, §106.121 and §106.123

The commission proposes to repeal §106.121, Hydraulic and Hydrostatic Testing Equipment and §106.123, Vacuum-producing Devices for Laboratory Use. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, repealing §106.121 and §106.123 would eliminate duplication and provide a clear regulatory structure. A facility currently authorized under one of these PBRs may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

Subchapter I: Manufacturing, §106.228

The commission proposes to repeal §106.228, Platen Presses for Laminating. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, repealing §106.228 would eliminate duplication and provide a clear regulatory structure. A facility currently authorized under this PBR may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

Subchapter L: Feed, Fiber, and Fertilizer, §106.282 and §106.291

The commission proposes to repeal §106.282, Feed Grinding Facilities and §106.291, Cotton Gin Stands. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, repealing §106.282 and §106.291 would eliminate duplication and provide a clear regulatory structure. A facil-

ity currently authorized under one of these PBRs may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

Subchapter M: Metallurgy, §106.312

The commission proposes to repeal §106.312, Wax Melting and Application. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, repealing §106.312 would eliminate duplication and provide a clear regulatory structure. A facility currently authorized under this PBR may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

Subchapter R: Service Industries, §106.413

The commission proposes to repeal §106.413, Bond Lining to Brake Shoes. These sources were listed as De Minimis Facilities or Sources under §116.119 in May 2008. Therefore, repealing §106.413 would eliminate duplication and provide a clear regulatory structure. A facility currently authorized under this PBR may continue to be authorized under the PBR until the facility is modified, or may be considered de minimis. Any new facility or modification will be considered de minimis.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of their administration or enforcement. The proposed rules are administrative in nature and are undertaken in an effort to ensure consistency between Chapters 106 and 116 regarding permitting issues for facilities and sources of air contaminants that emit minimal amounts of air contaminants.

In May 2008, the list of De Minimis Facilities or Sources was amended to add nine types of facilities. Previously, PBRs were issued for these facilities. These particular PBRs were issued for facilities with minimal emissions of air contaminants and have no control, recordkeeping, or registration requirements. No fees were charged for these PBRs unless a regulated entity voluntarily requested registration on or after June 30, 2004. Only six of the 73 known voluntary registrations of these PBRs occurred on or after this date and paid a fee.

This proposed rulemaking would repeal the PBR requirements for domestic use facilities, air conditioning and ventilation systems, hydraulic and hydrostatic testing equipment, vacuum-producing devices for laboratory use, platen presses for laminating, feed grinding facilities, cotton gin stands, wax melting and application equipment, and equipment for bonding lining to brake shoes to ensure that the regulated community understands that these sources would now be classified as de minimis facilities and no longer require PBR authorization under Chapter 106. Since state agencies and local governments incurred no costs associated with the PBRs issued for these facilities, the proposed rulemaking is not expected to have a fiscal impact on either the agency or other governmental entities.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be concise, clear, and uniform regulations for facilities that were added to the list of De Minimis Facilities or Sources in May 2008.

The proposed rulemaking will repeal sections of Chapter 106 for PBRs for certain types of facilities and sources that had minimal emissions of air contaminants. Since these particular PBRs had no control, recordkeeping, or registration requirements, fees paid by the regulated community and associated recordkeeping or control costs were minimal. The proposed repeals ensure clarity and are administrative in nature. Thus, businesses are not expected to experience any fiscal impacts as a result of the rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses that own or operate facilities added to the list of De Minimis Facilities or Sources in May 2008 as a result of the proposed rules. In the past, most small or micro-businesses owning or operating these types of facilities incurred no costs to obtain PBRs required by Chapter 106, and the repeal of the sections of Chapter 106 governing the PBRs for these facilities is not expected to have a fiscal impact on small or micro-businesses.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, a "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are intended to more effectively focus commission resources by eliminating duplication and providing a clear regulatory structure. This rulemaking will not negatively impact the environment or increase risks to human health from environmental exposure. However, the proposed rules generally tend to improve regulatory flexibility and reduce costs to regulated facilities and are therefore unlikely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. Because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225, definition of a "major environmental rule."

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because

this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The commission has determined that the promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. The proposed rules are administrative and do not impose any new regulatory requirements. The proposed repeal of §§106.101, 106.103, 106.121, 106.123, 106.228, 106.282, 106.291, 106.312, and 106.413 are intended to eliminate duplication and provide a clear regulatory structure. This change does not impact existing authorization under these exemptions. The proposed rules are reasonably taken to fulfill requirements of state law. Therefore, the proposed rules will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies.

The CMP goal applicable to this proposed rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The proposed repeals will indirectly benefit the environment because repealing the PBRs is expected to eliminate duplication and provide a clear regulatory structure. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.32). Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies. Written comments on the consistency of the proposed rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Most facilities affected by this rule change are minor sources and not subject to the Federal Operating Permits Program. However, if a facility was authorized by §§106.101, 106.103, 106.121, 106.123, 106.228, 106.282, 106.291, 106.312, or 106.413 and is located at a site with a federal operating permit, the permit holder may need to conduct an evaluation and determine if a revision to a federal operating permit is needed to update the applicable requirements.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on April 27, 2009 at 10:00 a.m. in Building C, Room 131E, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Jessica Rawlings, Office of Legal Services at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2008-029-106-PR. The comment period closes April 30, 2009. Copies of the proposed rulemaking can be obtained from the commission's web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Johnny Bowers, Air Permits Division, at (512) 239-6770.

SUBCHAPTER C. DOMESTIC AND COMFORT HEATING AND COOLING

30 TAC §106.101, §106.103

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.101. Domestic Use Facilities.

§106.103. Air Conditioning and Ventilation Systems.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2009.

TRD-200901056
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 239-0177

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SUBCHAPTER D. ANALYSIS AND TESTING

30 TAC §106.121, §106.123

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.121. Hydraulic and Hydrostatic Testing Equipment.

§106.123. Vacuum-producing Devices for Laboratory Use.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2009.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER I. MANUFACTURING

30 TAC §106.228

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types

of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The proposed repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.228. Platen Presses for Laminating.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER L. FEED, FIBER, AND FERTILIZER
DIVISION 1. FEED

30 TAC §106.282

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeals are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The proposed repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.282. Feed Grinding Facilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 239-0177

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DIVISION 2. FIBER

30 TAC §106.291

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The proposed repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.291. Cotton Gin Stands.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2009.

TRD-200901060

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 239-0177

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SUBCHAPTER M. METALLURGY

30 TAC §106.312

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The proposed repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.312. Wax Melting and Application.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2009.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 239-0177

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SUBCHAPTER R. SERVICE INDUSTRIES

30 TAC §106.413

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.051, concerning Permitting Authority of Commission; Rules, which authorizes the commission to issue a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere; §382.05196, concerning Permits by Rule, which authorizes the commission to adopt permits by rule for certain types of facilities; and §382.057, concerning Exemption, which authorizes exemptions from permitting.

The proposed repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, 382.051, 382.05196, and 382.057.

§106.413. Bond Lining to Brake Shoes.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2009.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 239-0177

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER X. PARI-MUTUEL WAGERING RACING REVENUE

34 TAC §3.641

The Comptroller of Public Accounts proposes amendments to §3.641, concerning pari-mutuel wagering. The proposed amendments allow the association to file the pari-mutuel

wagering forms and reports to the comptroller by electronic transmission. Subsection (b)(4), (6), and (7) are amended accordingly. Also, subsection (e)(4) is being amended for consistency in referencing statute.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by allowing technological improvements to improve methods for submitting pari-mutuel reports and the state's share of pari-mutuel pools to the comptroller. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Nancy Wilkins, Audit Division, P.O. Box 13528, Austin, Texas 78711.

The amendments are proposed under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The proposal implements Texas Racing Act, Texas Civil Statutes, Title 6, Article 179e, §4.03.

§3.641. Pari-mutuel Wagering.

(a) (No change.)

(b) Collection and remittance of the state's share from live and simulcast pari-mutuel pools; reports to the comptroller.

(1) - (3) (No change.)

(4) Upon remitting the state's share of the pari-mutuel pools to the comptroller, the association shall report by telephone to a data collection center designated by the comptroller the information shown on a pari-mutuel wagering deposit report form promulgated by the comptroller. The association shall also transmit a copy of the completed form to the comptroller by telephone line and by electronic transmission or by high-resolution facsimile equipment.

(5) (No change.)

(6) The association shall transmit a copy of the completed reports to the comptroller by electronic transmission or by facsimile equipment no later than the end of the next banking day following the performance. If problems exist in electronic or in telephone transmission or there is other breakdown in the facsimile equipment or electronic transmission, and copies of the reports cannot be transmitted, then associations shall notify the comptroller by telephone of such problems and discuss alternative reporting procedures.

(7) Originals of the reports that are transmitted to the comptroller by electronic transmission or by facsimile equipment shall be preserved in chronological order with other association records. These reports shall be available and furnished to the comptroller upon request.

(c) - (d) (No change.)

(e) Audit; appeal of audit findings.

(1) - (3) (No change.)

(4) An association may dispute any audit findings of the comptroller through the same procedures available to dispute audit findings under Tax Code, Title 2[~~, Tax Code~~].

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2009.

TRD-200901069
Martin Cherry
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: April 26, 2009
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §215.1, Licensing of Training Providers. Subsection (a) is amended to identify the types of training provider credentials. Subsection (b) is amended to identify the requirements for receiving training provider credentials. Subsection (c) is amended to identify the time limits for training provider credentials. Subsection (d) is amended to specify the reapplication time period. Subsection (e) is added to provide for a shorter credentialing period for at risk providers. Subsection (f) is added to specify the renewal requirements for training provider credentials. Subsection (g) is added to reflect the effective date of these changes.

These amendments are necessary to ensure that training provider types and requirements are clear to all entities interested in possessing training provider credentials.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the requirements for receiving training provider credentials.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors, §1701.153, Reports from Agencies and Schools, and §1701.254, Risk Assessment and Inspections.

No other code, article, or statute is affected by this proposal.

§215.1. Licensing of Training Providers.

(a) The commission may issue licenses or contracts [~~credentials~~] to the following training [~~three types of training or education~~] providers:

(1) a licensed law enforcement academy;

(2) a contractual training provider; or

(3) a licensed academic alternative provider.

(b) In order for a training provider to be issued a license or contract, an entity must make application and submit any required fee.

(c) The licenses or contracts issued by the commission will be for five years.

(d) Providers must re-apply, using the current renewal application, at least six months prior to expiration of license or contract.

(e) Renewal for a provider determined by the commission to be at-risk as defined in §215.13 of this chapter may be for a shorter time period.

(f) Provider renewal is dependent upon the commission's evaluation of the training provider's compliance with commission rules and performance of the provider's programs.

(g) The effective date of this section is July 6, 2009.

[~~(b) The commission issues these licenses or contracts for a specified period of time:~~]

[~~(1) five years for a licensed law enforcement academy;~~]

[~~(2) five years for a contractual training provider;~~]

[~~(3) five years for a licensed academic alternative provider; or~~]

[~~(4) for a shorter period as appropriate for a program found to be at risk.~~]

[~~(c) License renewal is dependent upon continued compliance with commission rules and performance, which includes risk assessment.~~]

[~~(d) The effective date of this section is March 1, 2007.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

TRD-200901016

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of and new Title 37, Texas Administrative Code, §215.3, Academy Licensing. The section proposed for repeal addresses the requirements for academy licensing. The proposed repeal of and new rule would clarify the requirements for academy licensing. These requirements include; entities eligible to apply for academy licensure, requirements for license application, requirements of training facilities, requirements of the chief administrator of the sponsoring organization and training coordinator to appear before the Commission, reporting requirements of the training coordinator or agency administrator, courses for which the Commission will award credit, conditions for which the Commission may take disciplinary action, the process for voluntary surrender of an academy license, and effective date.

The proposed action would repeal the current requirements from rule and specify the requirements for academy licensure.

Current §215.3, proposed for repeal, describes the requirements for academy licensure.

Proposed new §215.3, Academy Licensing, would clarify the academy licensing requirements. These changes are to establish consistency, continuity, and uniformity of regulations for training providers.

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be no fiscal implications for state or local governments as a result of administering the proposed repeal and new section.

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be a positive benefit to the public with a clearer understanding by the law enforcement community as to the requirements for §215.3, Academy Licensing.

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be no additional cost to small business, individuals, or both.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

37 TAC §215.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter

The repeal as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.252, Program and School Requirements; Advisory Board and §1701.052, Eligibility of Public Members.

No other code, article, or statute is affected by this proposal.

§215.3. Academy Licensing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

TRD-200901017

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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37 TAC §215.3

The new rule is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.252, Program and School Requirements; Advisory Board and §1701.052, Eligibility of Public Members.

No other code, article, or statute is affected by this proposal.

§215.3. Academy Licensing.

(a) A state or any political subdivision of the state may make application to provide law enforcement, corrections, telecommunications, and/or other law enforcement related training. The entity must be based on at least one of the following sponsoring organizations:

(1) a law enforcement agency with a minimum of 75 full-time paid peace officers, county jailers, and/or telecommunicators under current appointment;

(2) an institution recognized by the Texas Higher Education Coordinating Board (THECB); or

(3) a regional planning commission or councils of governments' (COG) board. The commission will issue only one academy license within each regional planning commission or councils of governments' area at any one time.

(b) As part of the application process, the following documents shall be submitted:

(1) a resolution of support from the governing body of the sponsoring organization;

(2) the proposed formal name of the academy, which must not misrepresent the status of the academy or be confusing to law enforcement or to the public;

(3) a proposed startup and operational budget and a proposed course schedule to show that training will be conducted on a continuing basis;

(4) a schedule of tuition and fees that will be charged, if any;

(5) documentation that an advisory board has already been appointed as required by §215.7 of this chapter and §1701.252 of the Texas Occupations Code, including a resume for each board member;

(6) advisory board minutes that show the advisory board has complied with the requirements of §215.7 of this chapter;

(7) the name, PID, and resume of the proposed training coordinator;

(8) documentation that the training coordinator is in compliance with the responsibilities required by law, or rule, to include but not limited to §215.9 of this chapter;

(9) the physical location and a description of the proposed training facility and any satellite sites;

(10) documentation that the academy meets the federal and state accessibility requirements to which its entity is subject and which apply to the academy's function, including course materials, course presentation, and facilities;

(11) documentation of any contract an academy may have as cosponsor with law enforcement agencies and other entities to conduct continuing education classes or basic county corrections training; and

(12) at the request of the executive director the applicant must forward for approval at least one copy of the learning objectives of each course covered by the contract.

(c) A training needs assessment must be completed and submitted for commission approval and shall include:

(1) a description of existing law enforcement academies in the proposed service area and documentation justifying the need for an additional academy;

(2) what specific training needs are not currently being provided by licensed academies in the regional planning commission or councils of governments' area;

(3) a description of whom the academy will serve, including the identity of each law enforcement agency the academy expects to serve, the number of officers the academy expects to train annually from each agency, and the basis for the academy's expectations;

(4) the number and types of courses that will be offered; and

(5) proof of notification by e-mail to all licensed academies within the regional planning commission or councils of governments' area of their intent to apply for an academy license and what specific training needs the applicant intends to meet.

(d) Upon approval of the application the proposed academy must pass an inspection of its facilities and instructional materials. The inspection shall be conducted by commission staff or by a team of academy coordinators as appointed by the executive director. An academy must have and maintain:

(1) facilities to accommodate the number of students being trained and the types of training being conducted, to include, but not limited to, adequately equipped classrooms, bathrooms, break rooms, and parking areas;

(2) qualified instructors and staff to conduct successful training;

(3) instructional resources to conduct successful training, to include, but not limited to, convenient access to a law enforcement reference library or sufficient number of computers for student and staff use;

(4) access to current and appropriate teaching tools and electronic equipment, including video players, projection equipment, computer hardware, software, and the Internet;

(5) a proprietary interest in or a written contract providing for a firing range suitable for the course of fire required in the current basic peace officer course, with safety rules clearly posted, secure storage and first aid equipment while on the premises; and

(6) a proprietary interest in or a written contract providing for at least one facility to conduct police driving training, to include at least one law enforcement automobile for training.

(e) The chief administrator of the sponsoring organization and the proposed training coordinator must appear before the commissioners to respond to questions prior to action being taken on the application.

(f) Once an academy license is issued, the chief administrator of the sponsoring organization, or the training coordinator, must report in writing to the commission within 30 days:

(1) any change in the chief administrator or training coordinator;

(2) any failure to meet commission rules and standards by the academy, training coordinator, instructors, or advisory board;

(3) when non-compliance with federal or state requirements is discovered; or

(4) any change in academy name, physical location, mailing address, electronic mail address, or telephone number.

(g) The commission will award training credit for any course conducted by a licensed academy as provided by commission rules unless the:

(1) course is not conducted as required by commission rules;

(2) training is not related to a commission license;

(3) advisory board, the academy, the training coordinator, the course coordinator, or the instructor failed to discharge any responsibility required by commission rule; or

(4) credit was claimed by deceitful means.

(h) The commission may suspend an academy license, or the executive director or his designee may issue a written reprimand to the sponsoring organization, if the:

(1) academy or the sponsoring organization fails to comply with commission rules or any law; or

(2) academy has been classified as at risk under §215.13 of this chapter.

(i) The commission may cancel an academy license if it was issued in error or based on false or incorrect information.

(j) The commission may revoke an academy license if the:

(1) academy has been classified as at risk under §215.13 of this chapter for a 12-month period without complying with commission rules;

(2) training coordinator intentionally or knowingly submits a falsified document or a false written statement or representation to the commission; or

(3) academy has not met the needs of the communities and/or agencies that it serves.

(k) An academy may surrender its license at any time or for any reason. To surrender the license, the chief administrator of the sponsoring organization must send written notice, accompanied by the license, to the executive director. The surrender is effective immediately upon receipt by the executive director.

(l) The effective date of this section is July 6, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

TRD-200901018
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: July 6, 2009
For further information, please call: (512) 936-7713

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of and new Title 37, Texas Administrative Code, §215.5, Contractual Training. The section proposed for repeal addresses the requirements for contractual training providers. The proposed repeal and new rule would clarify the requirements for contractual training. These requirements include: entities eligible to apply for contractual training, requirements for contract application, requirements of the chief administrator of the sponsoring organization and training coordinator to appear before the commission, reporting requirements of the training coordinator or agency administrator, terms of a contract, courses for which the commission will award credit, provisions for providing distance education, conditions for which the commission may take disciplinary action, provisions for terminating the contract, and effective date.

The proposed action would repeal the current requirements from rule and specify the requirements for contractual training.

Current §215.5, proposed for repeal, describes the requirements for contractual training.

Proposed new §215.5, Contractual Training, would clarify the requirements for a contract. These changes are to establish consistency, continuity, and uniformity of regulations for training providers.

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be no fiscal implications for state or local governments as a result of administering the proposed repeal and new section.

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be a

positive benefit to the public with a clearer understanding by the law enforcement community as to the requirements for §215.5, Contractual Training.

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be no additional cost to small business, individuals, or both.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

37 TAC §215.5

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The repeal as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.252, Program and School Requirements; Advisory Board and §1701.052, Eligibility of Public Members.

No other code, article, or statute is affected by this proposal.

§215.5. Contractual Training.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

TRD-200901020

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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37 TAC §215.5

The new rule is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.252, Program and School Requirements; Advisory Board and §1701.052, Eligibility of Public Members.

No other code, article, or statute is affected by this proposal.

§215.5. Contractual Training.

(a) A law enforcement agency, a law enforcement association, alternative delivery trainer, or proprietary training contractor may make application to conduct training for licensees.

(b) As part of the application process, the following documentation shall be submitted:

(1) documentation that an advisory board has been appointed as provided by §215.7 and Texas Occupations Code, §1701.252, including a resume for each board member;

(2) advisory board minutes that show the advisory board has complied with the requirements of §215.7;

(3) the name, PID, and resume of the proposed training coordinator;

(4) documentation that the training coordinator is in compliance with the responsibilities required by contract, law, or rule, to include but not limited to §215.9;

(5) a schedule of tuition and fees that will be charged, if any;

(6) selection of a training facility and instructional materials that meets inspection requirements identified in §215.3(d), as determined by the commission;

(7) documentation that the training facility meets the federal and state accessibility requirements to which its entity is subject and which apply to the training function, including course materials, course presentation, and facilities; and

(8) at the request of the executive director, the applicant must forward for approval at least one copy of the learning objectives of each course covered by the contract.

(c) A training needs assessment must be completed and submitted for commission approval and shall include:

(1) the names and description of existing law enforcement training programs in the area;

(2) what specific training needs are to be addressed by the proposed contract; and

(3) the number and types of courses that will be offered during the first quarter of the executed contract.

(d) The chief administrator of the sponsoring organization and the proposed training coordinator must appear before the commissioners to respond to questions prior to action being taken on the application.

(e) Once a contract is issued, the chief administrator of the sponsoring organization, or training coordinator, must report in writing to the commission within 30 days:

(1) any change in chief administrator or training coordinator;

(2) any failure to meet commission rules and standards by the provider, training coordinator, instructors, or advisory board;

(3) any change in provider name, physical location, mailing address, electronic mail address, or telephone number; or

(4) when non-compliance with federal or state requirements is discovered.

(f) A contract is limited to those terms expressly included in the contract or incorporated by reference and is:

(1) in the currently prescribed commission format;

(2) signed by the executive director;

(3) signed by the chief administrator or head of the sponsoring organization; and

(4) signed by the training coordinator responsible for the administration of that training.

(g) A contract may approve the courses and the number of times they will be offered. These contracts are for a stated period of time but may be terminated within 10 days by written notice on the part of either party to the contract. A contract may incorporate by reference a law, rule, or any other document; however, any waiver, exception, or deletion must be expressed.

(h) The commission will award training credit for any course conducted by a contract training provider as provided by commission rules unless:

(1) the training was not conducted in compliance with the contract;

(2) the advisory board, training coordinator or instructor failed to discharge any responsibility required by commission rule; or

(3) the credit was claimed by deceitful means.

(i) A contract to provide distance education courses may be approved if the contractual training provider:

(1) submits a request, for which a recovery fee may be charged, in accordance with the commission's rules or established procedures before the course is offered;

(2) ensures that each course will have one or more sponsors assigned, who shall be responsible both for the conduct of the course and the proctoring of any examination during the course;

(3) ensures that the student, without the use of deceitful means, completes the required coursework, receives a passing grade on any examination or evaluation required by the lesson guide or learning objectives; and

(4) ensures that the student's assigned work is corrected, graded, and reviewed by qualified instructors, and returned to the student via an exchange that provides a personalized student-teacher relationship.

(j) The executive director may suspend a contract for any violation of its terms or of any commission rule or law.

(k) The executive director may terminate a contract if no training is conducted within a calendar year unless the chief administrator has petitioned the executive director for a waiver and the waiver has been granted. Any party may terminate, upon written notice to all other parties, received by the executive director, or the coordinator, or any other named person or office.

(l) The effective date of this section is July 6, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

TRD-200901021

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of and new Title 37, Texas Administrative Code, §215.6, Academic Alternative Licensing. The section proposed for repeal addresses the requirements for academic alternative licensing. The proposed repeal and new rule would clarify the requirements for academic alternative licensing. These requirements include: entities eligible to apply for academic alternative licensing, requirements for academic alternative licensing, requirements of the dean or chair of the academic program and training coordinator to appear before the commission, reporting requirements of the training coordinator or agency administrator, courses for which the commission will award credit, conditions for which the commission may take disciplinary action, provisions for a voluntary surrender of the license, and effective date.

The proposed action would repeal the current requirements from rule and specify the requirements for academic alternative licensing.

Current §215.6, proposed for repeal, describes the requirements for academic alternative licensing.

Proposed new §215.6, Academic Alternative Licensing, would clarify the requirements for academic alternative licensing. These changes are to establish consistency, continuity, and uniformity of regulations for training providers.

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be fiscal implications for state or local governments as a result of administering the proposed repeal and new section.

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be a positive benefit to the public with a clearer understanding by the law enforcement community as to the requirements for §215.6, Academic Alternative Licensing.

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be no additional cost to small business, individuals, or both.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

37 TAC §215.6

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter

The repeal as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.252, Program and School Re-

quirements; Advisory Board and §1701.052, Eligibility of Public Members.

No other code, article, or statute is affected by this proposal.

§215.6. Academic Alternative Licensing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

TRD-200901022

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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37 TAC §215.6

The new rule is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.252, Program and School Requirements; Advisory Board and §1701.052, Eligibility of Public Members.

No other code, article, or statute is affected by this proposal.

§215.6. Academic Alternative Licensing.

(a) A Texas college or university that is accredited by the Southern Association of Colleges and Schools (SACS) and which has a criminal justice or law enforcement program approved by the Texas Higher Education Coordinating Board (THECB) may make application to conduct training for licensees.

(b) As part of the application process:

(1) documentation of approval from THECB for a criminal justice or law enforcement program;

(2) documentation that an advisory board has been appointed as provided by §215.7 and Texas Occupations Code, §1701.252, including a resume for each board member;

(3) advisory board minutes that show the advisory board has complied with the requirements of §215.7;

(4) the name, PID, and resume of the proposed training coordinator;

(5) documentation that the training coordinator has met the responsibilities required by contract, law, or rule, to include but not limited to §215.9;

(6) an operational budget and a proposed course schedule to show that training will be conducted;

(7) selection of a training facility and instructional materials that meet the inspection requirements identified in §215.3(d), as determined by the commission;

(8) documentation that the program meets the federal and state accessibility requirements to which its entity is subject and which apply to the training function, including course materials, course presentation, and facilities;

(9) documentation of any contractual provision the applicant may have with a licensed academy to provide the sequence courses;

(10) provisions for the Registrar to issue all endorsements; and

(11) at the request of the executive director, the applicant must forward for approval at least one copy of the learning objectives of each alternative course provided.

(c) A comprehensive training needs assessment must be submitted to the commission for approval and must include:

(1) a description of whom the alternative academic provider will serve and the number of students they expect to train annually;

(2) the basis for these expectations; and

(3) proof of notification by e-mail to all licensed academies within the area of the applicant's intent to apply for an academic alternative provider license.

(d) The dean or chair of the academic program and the proposed training coordinator must appear before the commissioners to respond to questions prior to action being taken on the application.

(e) Once a license is issued, the chief administrator or training coordinator of the academic alternative provider must report in writing to the commission within 30 days:

(1) any change in the dean of the department;

(2) any change in training coordinator;

(3) any failure to meet commission rules and standards by the training coordinator, instructors, or advisory board;

(4) any change in status with SACS and/or THECB;

(5) when non-compliance with federal or state requirements is discovered; or

(6) any change in provider name, physical location, mailing address, electronic mail address, or telephone number.

(f) The commission will award training credit for the academic alternative program when provided by licensed academic alternative providers, unless the:

(1) courses were not conducted in compliance with commission rules;

(2) courses were not conducted in compliance with THECB guidelines;

(3) advisory board, training coordinator, or instructor failed to discharge any responsibility required by rule; or

(4) credit was obtained by deceitful means.

(g) The commission may cancel an academic alternative license if it was issued in error or based on false or incorrect information.

(h) The commission may suspend an academic alternative license, or the executive director or his designee may issue a written reprimand to the dean of the department, if:

(1) the academic alternative provider fails to comply with commission rules or any law; or

(2) the academic alternative provider has been classified as at risk under §215.13 of this chapter.

(i) The commission may revoke an academic alternative license if:

(1) the academic alternative provider has been classified as at risk under §215.13 of this chapter for a 12-month period without complying with commission rules;

(2) the academic alternative provider has lost either SACS accreditation or THECB approval; or

(3) the training coordinator intentionally or knowingly submits a falsified document or a false written statement or representation to the commission.

(j) An academic alternative provider may surrender its license at any time for any reason. To surrender the license, the dean of the department must send written notice, accompanied by the license, to the executive director. The surrender is effective immediately upon receipt by the executive director.

(k) The effective date of this section is July 6, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

TRD-200901023

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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37 TAC §215.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §215.7, Training Provider Advisory Boards. Subsection (a) is amended to clarify the composition of the advisory board. Subsection (b) is amended to clarify the requirements of board members. Subsection (c) is amended to identify a board chair. Subsection (d) is amended to make reference to the board chair. Subsection (f) is amended to include academic alternative programs. Subsection (i) is amended to clarify the duties of the board. Subsection (l) is amended to reflect the effective date of these changes.

These amendments are necessary to ensure that the advisory board requirement is clear to all types of training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the advisory board requirements for all training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.252, Program and School Requirements; Advisory Board and §1701.052, Eligibility of Public Members.

No other code, article, or statute is affected by this proposal.

§215.7. Training Provider Advisory Board.

(a) All training providers approved by the commission must establish and maintain an advisory board, as required by the Texas Occupations Code, §1701.252. The [~~To be established, this~~] board must have at least three members who are appointed by the sponsoring organization. Board [~~To be maintained, the active, appointed~~] membership [~~of the board~~] must not fall below a quorum for more than 30 days. A quorum of the advisory board is defined as a minimum of 51% of the voting membership.

(b) The board may have members who are law enforcement personnel; however, one-third of the members must be public members, as defined [~~having the same qualifications, found~~] in the Texas Occupations Code, §1701.052, having the same qualification as any commissioner who is required by law to be a member of the general public. The chief administrator, or head of the sponsoring organization, and the designated training coordinator may only serve as [~~be~~] ex-officio, non-voting members.

(c) The chief administrator, or head of the sponsoring organization, may appoint a board chair, [~~chairman~~] or the board may elect a board member to serve as the board chair [~~chairman~~]. The board may elect other officers and set its own rules of procedure. A quorum must be present in order to conduct business.

(d) A board must meet at least once each calendar year. More frequent meetings may be called by the board chair [~~its chairman~~], the training coordinator, or the person who appoints the board.

(e) A board will keep written minutes of all meetings. These minutes must be retained for at least five years and a copy forwarded to the commission upon request.

(f) Board members will be appointed by the following authority:

(1) for an agency academy, by the chief administrator as defined in §211.1 of this chapter [~~title (relating to definitions)~~];

(2) for a college academy, by the dean or other person who appoints the training coordinator;

(3) for a regional academy, by the head of the council of governments or other sponsoring entity holding the academy license from names submitted by chief administrators from that area; [~~or~~]

(4) for a contractual training provider, by the chief administrator; or [~~.~~]

(5) for an academic alternative provider, by the dean or other person who appoints the training coordinator.

(g) A member may be removed by the appointing authority.

(h) A board is generally responsible for advising on the development of curricula and any other related duty that may be required by the commission.

(i) The board must, as specific duties:

(1) [~~effectively~~] discharge its responsibilities and otherwise comply with commission rules;

(2) advise on the need to study, evaluate, and identify specific training needs;

(3) advise on the determination of the types, frequency, and location of courses to be offered; [~~and~~]

(4) advise on the establishment of the standards for admission, prerequisites, minimum and maximum class size, attendance, and retention; and [~~.~~]

(5) advise on the order of preference among employees or prospective appointees of the sponsoring organization and other persons, if any.

(j) [~~A board must advise on the establishment of admission standards, and determine the order of preference between employees or prospective appointees of the sponsoring organization and other persons, if any.~~] No person may be admitted to a training course without meeting the admission standards. The admission standards for licensing courses must be available for review by the commission upon request.

(k) A board may, when discharging its responsibilities, request that a report be made or some other information be provided to them by a training or course coordinator.

(l) The effective date of this section is July 6, 2009 [~~December 1, 2006~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

TRD-200901024

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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37 TAC §215.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §215.9, Training Coordinator. Subsection (b) is amended to clarify the responsibilities of the training coordinator. Subsection (c) is amended to allow for petition for a waiver of the training coordinator requirements for a vacant coordinator position. Subsection (d) is amended to allow for petition for a waiver of the full-time paid employee requirement. Subsection (e) is amended to reflect the effective date of these changes.

These amendments are necessary to ensure that the responsibilities of a training coordinator are clear to all types of training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the responsibilities of a training coordinator for all types of training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.251, Training Programs; Instructors, and §1701.153, Reports from Agencies and Schools.

No other code, article, or statute is affected by this proposal.

§215.9. Training Coordinator.

(a) A training coordinator must hold a valid instructor license or certificate and must be a full-time paid employee.

(b) The training coordinator must:

(1) ensure compliance with commission rules and guidelines;

(2) prepare, maintain, and submit the following reports within the time frame specified:

(A) reports of training - to be submitted prior to the issuance of any endorsement for a licensing examination for a course leading to a license and within 30 days of completion of each continuing education course;

(B) self-assessment reports as required by the commission;

(C) a copy of advisory board minutes during an on-site evaluation;

(D) training calendars-schedules must be available for review or posted on the internet no later than 30 days prior to the beginning of each calendar quarter or academic semester;

(E) any other reports or records as requested by the commission;

(3) be responsible for the administration and conduct of each course, including those conducted at ancillary sites, and specifically:

(A) appointing and supervising qualified instructors;

(B) maintaining course schedules and course files, including lesson plans;

(C) enforcing all admission, attendance, retention, and other standards set by the commission and the advisory board;

(D) securing and maintaining all facilities necessary to meet the inspection standards of this section;

(E) controlling the discipline and demeanor of each student and instructor during class;

(F) distributing a current version of the Texas Occupations Code, Chapter 1701 and commission rules to all students at the time of admission to any course that may result in the issuance of a license;

(G) distributing learning objectives to all students at the beginning of each course;

(H) ensuring that all learning objectives are taught and evaluated;

(I) proctoring or supervising all examinations to ensure fair, honest results; and

(J) maintaining records of tests and other evaluation instruments for a period of five years.

(4) receive all commission notices on behalf of the training provider and forward each notice to the appointing authority; and

(5) attend or have a designee attend each academy coordinator's workshop conducted by the commission.

[(1) prepare, maintain, and submit the following reports within the time frame specified:]

[(A) reports training - to be submitted prior to the issuance of any endorsement for a licensing examination for a course leading to a license and within 30 days of completion of each continuing education course;]

[(B) self-assessment reports as required by the commission;]

[(C) a copy of advisory board minutes to be submitted during an on-site evaluation;]

[(D) training calendars or schedules must be available for review or posted on the Internet no later than 30 days prior to the beginning of each calendar quarter or academic semester;]

[(E) any other reports or records as requested by the commission;]

[(2) be responsible for the administration and conduct of each course, including those conducted at ancillary sites, and specifically:]

[(A) appointing and supervising qualified instructors;]

[(B) maintaining course schedules and course files, including lesson plans;]

[(C) securing and maintaining all facilities necessary to meet the inspection standards of this section;]

[(D) enforcing all admission, attendance, retention, and other standards set by the commission and the advisory board;]

[(E) distributing learning objectives to all students at the beginning of each course and ensure that all learning objectives are taught properly and evaluated, that all training is effective, and that no required instruction periods are consumed by matters that are frivolous or unrelated to the scheduled training;]

[(F) distributing a current version of the commission rules and law to all students at the time of application for admission, and ensuring that a review of the rules of the commission pertaining to continuing education for licensees, annual firearms proficiency, reporting responsibilities of individuals, revocation, suspension and voluntary surrender of licenses, proficiency certificates and the law enforcement achievement awards are part of any course that may result in the issuance of a license;]

[(G) controlling the discipline and demeanor of each student and instructor during class;]

[(H) proctoring or supervising all examinations to ensure fair, honest results; and]

[(I) maintaining records of tests and other evaluation instruments for a period of five years.]

[(3) receive all commission notices on behalf of the training provider and forward each notice to the appointing authority; and]

[(4) attend or have a designee attend each academy coordinator's workshop conducted by the commission.]

(c) If the position of training coordinator becomes vacant, upon written request from the chief administrator of the training provider the commission may, at the discretion of the executive director, waive the requirements for a period not to exceed six months.

(d) Upon written request from the chief administrator of a training provider that does not have a full-time paid staff, the commission may, at the discretion of the executive director, waive the requirements in subsection (a) of this section.

[(c) If the position of training coordinator becomes vacant, the commission may, at the discretion of the executive director and upon petition of the chief administrator of the training provider, waive the requirement for a full-time paid and assigned training coordinator for a period not to exceed six months.]

[(d) Upon petition of the chief administrator of a training provider that does not have a full-time paid staff, the commission may, at the discretion of the executive director, waive the requirement for a full-time paid training coordinator.]

(e) The effective date of this section is July 6, 2009 [March 1, 2007].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

TRD-200901025
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: July 6, 2009
For further information, please call: (512) 936-7713

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37 TAC §215.11

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §215.11, Training Provider Evaluations. Subsection (b) is amended to identify the items used to assess the performance of training providers. Subsection (c) is added to identify the distribution of the evaluation results. Subsection (d) is amended to reflect the effective date of these changes. Subsection (e) is deleted.

These amendments are necessary to ensure that the assessment items are clear to all types of training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the assessment items for all training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.254, Risk Assessment and Inspections, §1701.153, Reports from Agencies and Schools, and §1701.251, Training Programs; Instructors.

No other code, article, or statute is affected by this proposal.

§215.11. Training Provider Evaluations.

(a) All training providers shall be evaluated periodically and randomly. Providers with deficiencies will be evaluated more frequently, as determined by the commission.

(b) The commission may use the following information in assessing the performance of training providers:

(1) licensing examination results;

(2) reports from past evaluation records;

(3) self-assessment reports;

(4) on-site evaluations;

(5) reports and evaluations from students, law enforcement agencies, and citizens;

(6) commission records;

(7) course records;

(8) observations by commission staff;

(9) information used as risk assessment factors; and

(10) any other relevant information about performance and practices.

(c) The results of the evaluation will be forwarded to the chief administrator, training coordinator, advisory board chair.

(d) The effective date of this section is July 6, 2009.

~~[(b) All training providers shall submit a self-assessment report each state fiscal year other types of evaluation methods, including, but not limited to, on-site evaluations may be used.]~~

~~[(c) An evaluation of the training provider will be based upon the current evaluation method(s) used. The results of the evaluation will be forwarded to the chief administrator, training coordinator, advisory board chair and other appropriate persons associated with the training provider.]~~

~~[(d) The commission uses the following information in assessing the performance of training providers:]~~

~~[(1) licensing examination results;]~~

~~[(2) reports from past evaluation records;]~~

~~[(3) self-assessment reports;]~~

~~[(4) reports and evaluations from students, law enforcement agencies, and citizens;]~~

~~[(5) commission records;]~~

~~[(6) course records;]~~

~~[(7) observations by commission staff;]~~

~~[(8) information used as risk assessment factors; and]~~

~~[(9) any other relevant information about performance and practices.]~~

~~[(e) The effective date of this section is June 1, 2006.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

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Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7713

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37 TAC §215.13

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §215.13, Risk Assessment. Subsections (a) - (c) are amended for language clean up. Subsection (d) is amended to identify actions training providers must take after being found at risk. Subsection (e) is amended to identify action taken against training providers found at risk. Subsection (f) is amended to provide notification of at risk status. Subsection (g) is added to reflect the effective date of these changes.

These amendments are necessary to ensure that the risk assessment requirements are clear to all types of training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the risk assessment requirements for all types of training providers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.254, Risk Assessment and Inspections, §1701.153, Reports from Agencies and Schools, and §1701.251, Training Programs; Instructors.

No other code, article, or statute is affected by this proposal.

§215.13. Risk Assessment.

(a) A law enforcement academy may be found at risk if:[~~:~~]

(1) after January 1, 2003, if the passing rate on a licensing examination for first attempts for any state fiscal year is less than 70 percent of the students attempting the licensing exam;

(2) after September 1, 2009, [~~if~~] the passing rate on a licensing exam for first attempts for any three consecutive state fiscal years, beginning with state fiscal year 2007 (September 1, 2006 through August 31, 2007) is less than 80 percent of the students attempting the licensing exam;

(3) [~~if~~] commission required learning objectives are not taught;

(4) [~~if~~] lesson plans for classes conducted are not on file;

(5) [~~if~~] examination and other evaluative scoring documentation is not on file;

(6) [~~if~~] the academy files false reports to the commission;

(7) [~~if~~] the academy makes repeated errors in reporting;

(8) [~~if~~] the academy does not respond to commission requests for information;

(9) [~~if~~] the academy does not comply with commission rules or other applicable law;

(10) [~~if~~] the academy does not achieve the goals identified in its application for a license;

(11) [~~if~~] the academy does not meet the needs of the officers and law enforcement agencies served; or

(12) [~~if~~] the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(b) A contractual provider may be found at risk if: [~~:~~]

(1) the contractor provides licensing courses and fails to comply with the passing rates in subsection (a)(1) of this section; [~~for the same reasons in subsection (a) (1)-(2) if licensing courses or components are provided;~~]

(2) [~~if~~] lesson plans for classes conducted are not on file;

(3) [~~if~~] examination and other evaluative scoring documentation is not on file;

(4) [~~if~~] the provider submits [~~files~~] false reports to the commission;

(5) [~~if~~] the provider makes repeated errors in reporting;

(6) [~~if~~] the provider does not respond to commission requests for information;

(7) [~~if~~] the provider does not comply with commission rules or other applicable law;

(8) [~~if~~] the provider does not achieve the goals identified in its application for a license or contract;

(9) [~~if~~] the provider does not meet the needs of the officers and law enforcement agencies served; or

(10) [~~if~~] the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of training or failure to meet training needs for the service area.

(c) An academic alternative provider may be found at risk if:

(1) after January 1, 2003, if the passing rate on a licensing examination for first attempts for any 3 state fiscal year period is less than 70 percent of the students attempting the licensing exam;

(2) after September 1, 2009, [~~if~~] the passing rate on a licensing exam for first attempts for any three consecutive state fiscal years, beginning with state fiscal year 2007 (September 1, 2006 through August 31, 2007) is less than 80 percent of the students attempting the licensing exam;

(3) [~~if~~] courses are not conducted in compliance with Higher Education Program Guidelines accepted by the commission;

(4) [~~if~~] the commission required learning objectives are not taught;

(5) [~~if~~] the program submits [~~files~~] false reports to the commission;

(6) [~~if~~] the program makes repeated errors in reporting;

(7) [~~if~~] the program does not respond to commission requests for information;

(8) [~~if~~] the program does not comply with commission rules or other applicable law;

(9) [~~if~~] the program does not achieve the goals identified in its application for a license or contract;

(10) [~~if~~] the program does not meet the needs of the students and law enforcement agencies served; or

(11) [~~if~~] the commission has received sustained complaints or evaluations from students or the law enforcement community concerning the quality of education or failure to meet education needs for the service area.

(d) If at risk, the chief administrator of the sponsoring organization, or the training coordinator, must report to the commission in writing within 30 days what steps have been taken to correct deficiencies and on what date they expect to be in compliance. [~~At risk training providers must follow commission directives.~~]

(e) The commission may take action to revoke their license or contract. The commission may choose not to renew a license or contract with a program that has been found to be at risk or the commission may renew the contract for a shorter period than stated in §215.1 of this

title. [~~A training or educational program at risk must notify all students and potential students of their at risk status. The commission may take action to revoke their license or contract. The commission may choose not to renew a license or contract with a program that has been found to be at risk or the commission may renew the contract for a shorter period than stated in §215.1 of this title.~~]

(f) A training or educational program at risk must notify all students and potential students of their at risk status. [~~The effective date of this section is June 1, 2007.~~]

(g) The effective date of this section is July 6, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2009.

TRD-200901027

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §217.1, Minimum Standards for Initial Licensure. Subsection (b) is amended to clarify out-of-state convictions. Subsection (c) is amended to clarify felony convictions. Subsection (d) is added to identify factors considered for mitigating circumstances. Subsection (e) is amended to clarify training requirements. Subsection (f) is amended to clarify licensing of elected officials. Subsection (g) is amended to clarify the licensing requirements for sheriffs. Subsection (h) is amended to clarify the licensing requirements for constables. Subsection (i) is amended to clarify the provisional licensing requirements. Subsection (j) is amended to clarify the temporary jailer licensing requirements. Subsection (k) is amended to clarify the cancellation of a license. Subsection (l) is amended to reflect the effective date. Subsections (m), (n), and (o) have been deleted.

These amendments are necessary to clarify licensing requirements and to identify which factors will be considered for mitigating circumstances.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by identifying which factors will be considered for mitigating circumstances.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.253, School Curriculum, §1701.256, Instruction in Weapons Proficiency Required, §1701.301, License Required, §1701.302, Certain Elected Law Enforcement Officers; License Required, §1701.306, Psychological and Physical Examination, §1701.307, Issuance of License, §1701.309, Age Requirement, §1701.310, Appointment of County Jailer; Training Required, and §1701.311, Provisional License for Workforce Shortage.

No other code, article, or statute is affected by this proposal.

§217.1. Minimum Standards for Initial Licensure.

(a) The commission shall issue a peace officer, jailer, temporary jailer, or public security officer license to an applicant who meets the following standards:

(1) minimum educational requirements:

(A) has passed a general educational development (GED) test indicating high school graduation level;

(B) is a high school graduate; or

(C) has 12 semester hours credit from an accredited college or university.

(2) for peace officers and public security officers, is 21 years of age, or 18 years of age if the applicant has received an associate's degree or 60 semester hours of credit from an accredited college or university or has received an honorable discharge from the armed forces of the United States after at least two years of active service; for jailers is 18 years of age;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) community supervision history:

(A) has not ever have been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(B) the commission may approve the application of a person who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) conviction history:

(A) has not ever been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(B) the commission may approve the application of a person who was convicted for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(7) has never been convicted of any family violence offense;

(8) is not prohibited by state or federal law from operating a motor vehicle;

(9) is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation and has been interviewed prior to appointment by representatives of the appointing authority;

(11) has been examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared in writing by that professional within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought;

(B) show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) has been examined by a psychologist, selected by the appointing or employing agency, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought and appointment to be made. This examination may also be conducted by a psychiatrist. The appointee must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought within 180 days before the date of appointment by the agency. The examination must be conducted pursuant to professionally recognized standards and methods:

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed;

(B) the examination may be conducted by qualified persons identified by §501.004, Texas Occupations Code. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has not been discharged from any military service under less than honorable conditions including, specifically;

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable;

(D) any other characterization of service indicating bad character;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a voluntary surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) has not violated any commission rule or provision of Occupations Code, Chapter 1701; and

(18) is a U.S. citizen.

(b) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(c) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(d) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the applicant's history of compliance with the terms of community supervision;

(2) the applicant's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the applicant's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the applicant;

(8) the applicant's prior community service;

(9) the applicant's present value to the community;

(10) the applicant's post-arrest accomplishments;

(11) the applicant's age at the time of arrest; and

(12) the applicant's prior military history.

(e) A person must successfully complete the minimum training required for the license sought:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course;

(B) a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) a commission approved academic alternative program, taken through a licensed academic alternative provider, and after September 1, 2003, at least an associate's degree.

(2) training for the jailer license consists of the current basic county corrections course(s);

(3) training for the public security officer license consists of the current basic peace officer course; and

(4) passing any examination required for the license sought while the endorsement remains valid.

(f) The commission shall issue a peace officer or jailer license to any person who is otherwise qualified for that license, even if that person is not subject to the licensing law or rules by virtue of election or appointment to office under the Texas Constitution.

(g) A sheriff who first took office on or after January 1, 1994, must meet the licensing requirements of Texas Occupations Code §1701.302.

(h) A constable taking office after August 30, 1999, must meet the licensing requirements of Texas Local Government Code §86.0021.

(i) The commission may issue a provisional license, consistent with Texas Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license. A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant. A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency;

(3) on the date the holder fails the peace officer licensing examination for the third time; or

(4) on failure to comply with the terms stipulated in the provisional license approval.

(j) The commission may issue a temporary jailer license, consistent with Texas Occupations Code §1701.310. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a temporary jailer license. A temporary jailer license expires:

(1) 12 months from the original appointment date;

(2) on completion of training and passing of the jailer licensing examination; or

(3) on the date the holder fails the jailer licensing examination for the third time.

(k) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(l) The effective date of this section is July 6, 2009.

~~[(b) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.]~~

~~[(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:]~~

~~[(1) another penal provision of Texas law; or]~~

~~[(2) a penal provision of any other state, federal, military or foreign jurisdiction.]~~

~~[(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.]~~

~~[(e) An agency must retain records required under this section for a minimum of five years after the licensee's termination date with that agency. These records must be maintained in a format readily accessible to the commission.]~~

~~[(f) An agency must report to the commission any failure to appoint an individual in the reported capacity within 30 days of the reported date of appointment. Such report must be made in the currently prescribed commission format for termination.]~~

~~[(g) A person must successfully complete the minimum training required for the license sought:]~~

~~[(1) training for the peace officer license consists of:]~~

~~[(A) the current basic peace officer course; or]~~

~~[(B) successful completion of a commission recognized, POST developed, basic law enforcement training course, to include:]~~

~~*[(i)* out of state licensure or certification; and]~~

~~*[(ii)* submission of the current eligibility application and fee; or]~~

~~[(C) as an alternative to the current basic peace officer course taken at a licensed academy, the commission may approve an academic alternative program that is part of a degree plan program and consists of the commission-approved transfer curriculum, the commission-approved peace officer sequence courses, and after September 1, 2003, at least an associate's degree;]~~

~~[(2) training for the jailer license consists of the current basic county corrections course(s);]~~

~~[(3) training for the public security officer license consists of the current basic peace officer course;]~~

~~[(4) passing any examination required for the license sought while the endorsement remains valid, and]~~

~~[(5) the licensing application must be submitted to the commission by a law enforcement or other appointing agency in the completed application format currently prescribed by the commission for the license sought.]~~

~~[(h) The commission shall issue a peace officer or jailer license to any person who is otherwise qualified for that license, even if that~~

~~person is not subject to the licensing law or rules by virtue of election or appointment to office under the Texas Constitution.]~~

~~[(i) A sheriff who first took office on or after January 1, 1994, must be licensed by the commission not later than two years after taking office.]~~

~~[(j) A constable taking office after August 30, 1999, must be licensed by the commission not later than 270 days after taking office.]~~

~~[(k) The commission may issue a provisional license, consistent with Texas Occupations Code 1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license.]~~

~~[(l) A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant.]~~

~~[(m) A provisional license may not be reissued and expires:]~~

~~[(1) 12 months from the original appointment date;]~~

~~[(2) on leaving the appointing agency;]~~

~~[(3) on the date the holder fails the peace officer licensing examination for the third time; or]~~

~~[(4) on failure to comply with the terms stipulated in the provisional license approval.]~~

~~[(n) A temporary jailer license may not be reissued and expires:]~~

~~[(1) 12 months from the original appointment date;]~~

~~[(2) on completion of training and passing of the jailer licensing examination; or]~~

~~[(3) on the date the holder fails the jailer licensing examination for the third time.]~~

~~[(o) The effective date of this section is January 1, 2009.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901029

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §221.1, Proficiency Certificate Requirements. Subsection (a) is amended to clarify that all certificates under this chapter are voluntary. Subsection (f) is amended to reflect the effective date of these changes.

These amendments are necessary to clarify that any certificate issued by the Commission is voluntary and granted to those qualified individuals that make application.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by continuing to grant voluntary proficiency certificates to qualified law enforcement personnel.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this proposal.

§221.1. Proficiency Certificate Requirements.

(a) To qualify for <u>any of the voluntary</u> proficiency certificates <u>in this chapter</u>, applicants must meet all the following proficiency requirements:

(1) submit any required application currently prescribed by the commission, requested documentation, and any required fee;

(2) have an active license or appointment for the corresponding certificate (not a requirement for Mental Health Officer Proficiency, Retired Peace Officer and Federal Law Enforcement Officer Firearms Proficiency, Firearms Instructor Proficiency, Firearms Proficiency for Community Supervision Officers, or Instructor Proficiency);

(3) officers licensed after the effective date of this rule must not currently have license(s) under suspension by the <u>commission</u> [~~Commission~~];

(4) meet the continuing education requirements for the previous training cycle; and

(5) for firearms related certificates, not be prohibited by state or federal law or rule from attending training related to firearms or from possessing a firearm.

(b) The commission may refuse an application if:

(1) an applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) an applicant has not affixed any required signature;

(3) required forms are incomplete;

(4) required documentation is incomplete, illegible, or is not attached; or

(5) an application contains a false assertion by any person.

(c) The commission shall cancel and recall any certificate if the applicant was not qualified for its issue and it was issued:

(1) by mistake of the commission or an agency; or

(2) based on false or incorrect information provided by the agency or applicant.

(d) If an application is found to be false, any license or certificate issued to the appointee by the commission will be subject to cancellation and recall.

(e) Academic degree(s) must be issued by an accredited college or university.

(f) The effective date of this section is July 6, 2009 [~~January 1, 2009~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901030
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Standards and Education
Proposed date of adoption: July 6, 2009
For further information, please call: (512) 936-7713

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CHAPTER 223. ENFORCEMENT

37 TAC §223.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §223.15, Suspension of License. Subsection (i) is added to identify factors considered for mitigating circumstances. Subsection (j) is amended to clarify the beginning date for a suspension. Subsection (k) is amended to clarify the probation of a suspension. Subsection (l) is amended to clarify terms of probation. Subsection (m) is amended to clarify the length of probation. Subsection (n) is amended to clarify the conditions for extending a suspension. Subsection (o) is amended to clarify requirements for reinstatement. Subsection (p) is amended to clarify the notification responsibilities of the Commission. Subsection (q) is amended to clarify the length of a suspension. Subsection (r) is amended to reflect the effective date of these changes.

These amendments are necessary to identify which factors will be considered for mitigating circumstances.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by identifying which factors will be considered for mitigating circumstances.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.501, Disciplinary Action and §1701.502, Felony Conviction or Placement on Community Supervision.

No other code, article, or statute is affected by this proposal.

§223.15. Suspension of License.

(a) - (h) (No change.)

(i) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the licensee's history of compliance with the terms of community supervision;

(2) the licensee's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the licensee's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the licensee;

(8) the licensee's prior community service;

(9) the licensee's present value to the community; and

(10) the licensee's post-arrest accomplishments.

(j) [~~(i)~~] A suspension or probation may be ordered to run concurrently or consecutively with any other suspension or probation. The beginning date of a probation must be within the term of suspension. The beginning date of the suspension shall be:

(1) any date agreed to by both parties, which is no earlier than the date of the rule violation;

(2) the date the licensee notifies the commission in writing of the rule violation if the commission later receives a signed waiver of suspension from the licensee that was postmarked within 30 days of its receipt;

(3) the date the commission final order is entered in a contested case or the date it becomes effective, if that order is appealed.

(k) [~~(j)~~] The executive director shall inform the commissioners of any such probation or reprimand no later than at their next regular meeting. If probated either way, a suspension may not be probated for less than six months.

(l) [~~(k)~~] The commission may impose reasonable terms of probation, such as:

(1) continued employment requirements;

(2) special reporting conditions;

(3) special document submission conditions;

(4) voluntary duty requirements;

(5) no further rule or law violations; or

(6) any other reasonable term of probation.

(m) [~~(l)~~] A probated license remains probated until:

(1) the term of suspension has expired;

(2) all other terms of probation have been fulfilled; and

(3) a written request for reinstatement has been received and accepted by the commission from the licensee unless the probation has been revoked by the commission for violation of probation; or

(4) until revoked.

(n) [~~(m)~~] Twelve months may be added to the term of a new suspension for each separate previous violation that has resulted in either a license suspension, a probated suspension, or a written reprimand before the beginning date of the new suspension.

(o) [~~(n)~~] Before reinstatement, the probation of a suspended license may be revoked upon a showing that any of its terms have been violated before the expiration date of the probation regardless of when the petition is filed. Upon revocation, the full term of suspension shall be imposed with credit for any time already served on that suspension.

(p) [~~(o)~~] Once a license has been suspended, the suspension probated, the probation revoked, or the licensee reprimanded, the commission shall send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.

(q) [~~(p)~~] A suspended license remains suspended until:

(1) the term of suspension has expired and the term of court-ordered community supervision has been completed; and

(2) a written request for reinstatement has been received from the licensee and accepted by the commission; or

(3) the remainder of the suspension is probated and the license is reinstated.

(r) [~~(q)~~] The effective date of this section is July 6, 2009 [~~March 1, 2001~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901031

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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37 TAC §223.16

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §223.16, Suspension of License for Constitutionally Elected Officials. Subsection (i) is added to identify factors considered for mitigating circumstances. Subsection (j) is amended to clarify the beginning date for a suspension. Subsection (k) is amended to clarify the probation of a suspension. Subsection (l) is amended to clarify terms of probation. Subsection (m) is amended to clarify the length of probation. Subsection (n) is amended to clarify the conditions for extending a suspension. Subsection (o) is amended to clarify requirements for reinstatement. Subsection (p) is amended to clarify the notification responsibilities of the commission. Subsection (q) is amended to clarify the length of a suspension. Subsection (r) is added to reflect the effective date of these changes.

These amendments are necessary to identify which factors will be considered for mitigating circumstances.

The Commission has determined that there will be no employment impact for local governments for each year of the first five years the rule will be in effect.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by identifying which factors will be considered for mitigating circumstances.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.501, Disciplinary Action, and §1701.502, Felony Conviction or Placement on Community Supervision.

No other code, article, or statute is affected by this proposal.

§223.16. Suspension of License for Constitutionally Elected Officials.

(a) Unless revocation is explicitly authorized by law, the commission may suspend any license issued by the commission to a constitutionally elected licensee if the licensee:

(1) violates any provision of these sections;

(2) violates any provision of the Occupations Code, Chapter 1701;

(3) is convicted of a criminal offense;

(4) is charged with the commission of a misdemeanor, adjudication is deferred, and the licensee is placed on community supervision; or

(5) has previously received two written reprimands from the commission.

(b) The commission may suspend a license even though it may have become inactive by some other means, such as:

(1) expiration;

(2) voluntary surrender;

(3) two-year break in service; or

(4) any other means.

(c) If a licensee is charged with the commission of a felony, adjudication is deferred, and the licensee is placed on community supervision, the commission shall immediately suspend any license held for a period of 20 years. The suspension of any license under this subsection is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee via certified mail that any license held is suspended.

(d) If a judgment and sentence is entered resulting in a misdemeanor conviction above the grade of a Class C misdemeanor, the term of suspension shall be ten years.

(e) The commission may suspend for not less than six months and not more than 24 months the license of a constitutionally elected officer convicted or who receives a deferred adjudication for a Class C misdemeanor that was directly related to the duties and responsibilities of office, after the commission has considered, where applicable, the factors listed in the revocation section.

(f) If the court's judgment or adjudication is deferred for any misdemeanor above the grade of Class C misdemeanor or any family violence offense, and the licensee is then placed on community supervision, the term of suspension shall be equal to the actual time served on community supervision.

(g) If a license can be suspended for a community supervision or misdemeanor conviction, the commissioners may, in their discretion and upon proof of mitigating factors, either:

(1) probate all or part of the suspension term during a probation term of up to twice the maximum suspension term; or

(2) issue a written reprimand in lieu of suspension.

(h) If a license can be suspended for any other reason, the commission, through its executive director may, in its discretion and upon proof of the same mitigating factors, either:

(1) probate all or part of the suspension term during a probation term of up to twice the maximum suspension term; or

(2) issue a written reprimand in lieu of suspension.

(i) In evaluating whether mitigating circumstances exist, the commission will consider the following factors:

(1) the licensee's history of compliance with the terms of community supervision;

(2) the licensee's continuing rehabilitative efforts not required by the terms of community supervision;

(3) the licensee's employment record;

(4) whether the disposition offense contains an element of actual or threatened bodily injury or coercion against another person under the Texas Penal Code or the law of the jurisdiction where the offense occurred;

(5) the required mental state of the disposition offense;

(6) whether the conduct resulting in the arrest resulted in the loss of or damage to property or bodily injury;

(7) the type and amount of restitution made by the licensee;

(8) the licensee's prior community service;

(9) the licensee's present value to the community; and

(10) the licensee's post-arrest accomplishments.

(j) A suspension or probation may be ordered to run concurrently or consecutively with any other suspension or probation. The beginning date of a probation must be within the term of suspension. The beginning date of the suspension shall be:

(1) any date agreed to by both parties, which is no earlier than the date of the rule violation;

(2) the date the licensee notifies the commission in writing of the rule violation if the commission later receives a signed waiver of suspension from the licensee that was postmarked within 30 days of its receipt;

(3) the date the commission final order is entered in a contested case or the date it becomes effective, if that order is appealed.

(k) The executive director shall inform the commissioners of any such probation or reprimand no later than at their next regular meeting. If probated either way, a suspension may not be probated for less than six months.

(l) The commission may impose reasonable terms of probation, such as:

(1) continued employment requirements;

(2) special reporting conditions;

(3) special document submission conditions;

(4) voluntary duty requirements;

(5) no further rule or law violations; or

(6) any other reasonable term of probation.

(m) A probated license remains probated until:

(1) the term of suspension has expired;

(2) all other terms of probation have been fulfilled; and

(3) a written request for reinstatement has been received and accepted by the commission from the licensee unless the probation has been revoked by the commission for violation of probation; or

(4) until revoked.

(n) Twelve months may be added to the term of a new suspension for each separate previous violation that has resulted in either a license suspension, a probated suspension, or a written reprimand before the beginning date of the new suspension.

(o) Before reinstatement, the probation of a suspended license may be revoked upon a showing that any of its terms have been violated before the expiration date of the probation regardless of when the petition is filed. Upon revocation, the full term of suspension shall be imposed with credit for any time already served on that suspension.

(p) Once a license has been suspended, the suspension probated, the probation revoked, or the licensee reprimanded, the commission shall send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.

(q) A suspended license remains suspended until:

(1) the term of suspension has expired and the term of court-ordered community supervision has been completed; and

(2) a written request for reinstatement has been received from the licensee and accepted by the commission; or

(3) the remainder of the suspension is probated and the license is reinstated.

(r) The effective date of this section is July 6, 2009.

~~[(i) A suspension or probation may be ordered to run concurrently or consecutively with any other suspension or probation. The beginning date of a probation must be within the term of suspension. The beginning date of the suspension shall be:]~~

~~[(1) any date agreed to by both parties, which is no earlier than the date of the rule violation;]~~

~~[(2) the date the licensee notifies the commission in writing of the rule violation if the commission later receives a signed waiver of suspension from the licensee that was postmarked within 30 days of its receipt;]~~

~~[(3) the date the commission final order is entered in a contested case or the date it becomes effective, if that order is appealed.]~~

~~[(j) The executive director shall inform the commissioners of any such probation or reprimand no later than at their next regular meeting. If probated either way, a suspension may not be probated for less than six months.]~~

~~[(k) The commission may impose reasonable terms of probation, such as:]~~

~~[(1) continued employment requirements;]~~

~~[(2) special reporting conditions;]~~

~~[(3) special document submission conditions;]~~

~~[(4) voluntary duty requirements;]~~

~~[(5) no further rule or law violations; or]~~

~~[(6) any other reasonable term of probation.]~~

~~[(l) A probated license remains probated until:]~~

~~[(1) the term of suspension has expired;]~~

~~[(2) all other terms of probation have been fulfilled; and]~~

~~[(3) a written request for reinstatement has been received and accepted by the commission from the licensee unless the probation has been revoked by the commission for violation of probation; or]~~

~~[(4) until revoked.]~~

~~[(m) Twelve months may be added to the term of a new suspension for each separate previous violation that has resulted in either a license suspension, a probated suspension, or a written reprimand before the beginning date of the new suspension.]~~

~~[(n) Before reinstatement, the probation of a suspended license may be revoked upon a showing that any of its terms have been violated before the expiration date of the probation regardless of when the petition is filed. Upon revocation, the full term of suspension shall be imposed with credit for any time already served on that suspension.]~~

~~[(o) Once a license has been suspended, the suspension probated, the probation revoked, or the licensee reprimanded, the commission shall send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.]~~

~~[(p) A suspended license remains suspended until:]~~

~~[(1) the term of suspension has expired and the term of court-ordered community supervision has been completed; and]~~

~~[(2) a written request for reinstatement has been received from the licensee and accepted by the commission; or]~~

~~[(3) the remainder of the suspension is probated and the license is reinstated.]~~

~~[(q) The effective date of this section is September 1, 2004.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901032
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: July 6, 2009
For further information, please call: (512) 936-7713

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37 TAC §223.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §223.19, Revocation of License. Subsection (b) is amended to clarify felony convictions for revocation. Subsection (c) is amended to clarify Class B misdemeanors directly related to duties for revocation. Subsection (d) is amended to include Class A misdemeanors and clarify military discharges for revocation. Subsection (e) is amended to clarify that revocation is a permanent disqualification. Subsection (f) is amended to clarify the process for conditional revocation. Subsection (g) is amended to clarify the reinstatement process. Subsection (h) is amended to clarify the notification responsibilities of the Commission. Subsection (i) is amended to clarify the revocation of licenses. Subsection (j) is amended to clarify the date of revocation. Subsection (k) is added to reflect the effective date of these changes. Subsections (l), (m), and (n) have been deleted.

These amendments are necessary to eliminate the disparity that exists regarding prior criminal convictions for new applicants and criminal convictions for incumbent officers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that there will be no employment impact for local governments for each year of the first five years the rule will be in effect.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by eliminating the disparity that exists regarding prior criminal convictions for new applicants and criminal convictions for incumbent officers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.501, Disciplinary Action and §1701.502, Felony Conviction or Placement on Community Supervision.

No other code, article, or statute is affected by this proposal.

§223.19. Revocation of License.

(a) The commission shall immediately revoke any license issued by the commission if the licensee is or has been convicted of a felony offense under the laws of this state, another state, or the United States as provided below. The revocation of any license held is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee that any license held is revoked. Notice of revocation shall be sent via certified U.S. Mail to the address shown on the Texas driver's license record of the licensee and to the address of the agency showing the licensee under current or last appointment.

(b) A person is convicted of a felony when an adjudication of guilt on a felony offense is entered against that person by a court of competent jurisdiction whether or not:

(1) the sentence is subsequently probated and the person is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(3) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(c) Except as provided by subsection (a) of this section, the commission may revoke the license of a person who is either convicted of a Class B misdemeanor offense or placed on deferred adjudication community supervision for a misdemeanor or felony offense, if the offense directly relates to the duties and responsibilities of any related office held by that person. In determining whether a criminal offense directly relates to such office, the commission shall, under this subsection, consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purpose for requiring a license for such office;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.

(d) The commission shall revoke any license issued by the commission if the licensee:

(1) has ever been convicted of, placed on community supervision or had an adjudication of guilt deferred for a Class "A" misdemeanor offense;

(2) is or has been discharged from any military service under less than honorable conditions including specifically;

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable; or

(D) any other characterization of service indicating bad character.

(3) has made, submitted, caused to be submitted, or filed a false or untruthful report to the commission;

(4) has been found to be in unauthorized possession of any commission licensing examination or portion of a commission licensing examination, or a reasonable facsimile thereof; or

(5) violates any section where revocation is the penalty noted.

(e) Revocation of a license shall permanently disqualify a person from licensing and a license may not be reinstated except when the licensee proves the facts supporting the revocation have been negated, such as:

(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;

(2) the discharge under less than honorable conditions has been upgraded to honorable conditions;

(3) the report alleged to be false or untruthful was found to be truthful; or

(4) the section was not violated.

(f) During the direct appeal of any appropriate conviction, a license may be conditionally revoked pending resolution of the mandatory direct appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.

(g) The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the licensee that the facts supporting the revocation have been negated. If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting. If denied, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.

(h) Once a license has been revoked, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.

(i) The commission may revoke a license even though it has become inactive by some other means, such as:

(1) expiration;

(2) suspension;

(3) voluntary surrender;

(4) two-year break in service; or

(5) any other means.

(j) The date of revocation will be the earliest date that:

(1) a waiver was signed by the holder; or

(2) a final order of revocation was signed by the commissioners.

(k) The effective date of this section is July 6, 2009.

[(b) A deferred adjudication community supervision is not a felony conviction.]

[(c) A person is convicted of a felony when an adjudication of guilt on a felony offense is entered against that person by a court of competent jurisdiction whether or not:]

[(1) the sentence is subsequently probated and the person is discharged from community supervision;]

[(2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or]

[(3) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.]

[(d) Except as provided by subsection (a) of this section, the commission may revoke the license of a person who is either convicted of a misdemeanor offense or placed on deferred adjudication community supervision for a misdemeanor or felony offense, if the offense directly relates to the duties and responsibilities of any related office held by that person. In determining whether a criminal offense directly relates to such office, the commission shall, under this subsection, consider:]

[(1) the nature and seriousness of the crime;]

[(2) the relationship of the crime to the purpose for requiring a license for such office;]

[(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and]

[(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.]

[(e) The commission shall revoke any license issued by the commission if the licensee:]

[(1) is or has been discharged from any military service under less than honorable conditions including specifically;]

[(A) under other than honorable conditions;]

[(B) bad conduct;]

[(C) dishonorable; or]

[(D) any other characterization of service indicating bad character.]

[(2) has made, submitted, caused to be submitted, or filed a false or untruthful report to the commission;]

[(3) has been found to be in unauthorized possession of any commission licensing examination or portion of a commission licensing examination, or a reasonable facsimile thereof; or]

[(4) violates any section where revocation is the penalty noted.]

[(f) Revocation of a license shall permanently disqualify a person from licensing and a license may not be reinstated except when the licensee proves the facts supporting the revocation have been negated, such as:]

[(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;]

[(2) the discharge under less than honorable conditions has been upgraded to honorable conditions;]

[(3) the report alleged to be false or untruthful was found to be truthful; or]

[(4) the section was not violated.]

[(g) During the direct appeal of any appropriate conviction, a license may be conditionally revoked pending resolution of the mandatory direct appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.]

[(h) The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the licensee that the facts supporting the revocation have been negated.]

[(i) If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting.]

[(j) If denied, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.]

[(k) Once a license has been revoked, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator of any agency shown to have the licensee under either current or latest appointment.]

[(l) The commission may revoke a license even though it has become inactive by some other means, such as:]

[(1) expiration;]

[(2) suspension;]

[(3) voluntary surrender;]

[(4) two-year break in service; or]

[(5) any other means.]

[(m) The date of revocation will be the earliest date that:]

[(1) a waiver was signed by the holder; or]

[(2) a final order of revocation was signed by the commissioners.]

[(n) The effective date of this section is October 5, 2008.]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901033
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: July 6, 2009
For further information, please call: (512) 936-7713

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37 TAC §223.20

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §223.20, Revocation of License for Constitutionally Elected Officials. Subsection (b) is amended to clarify felony convictions for revocation. Subsection (c) is

amended to clarify misdemeanors directly related to duties for revocation. Subsection (d) is amended to clarify that revocation is a permanent disqualification. Subsection (e) is amended to clarify the process for conditional revocation. Subsection (f) is amended to clarify the reinstatement process. Subsection (g) is amended to clarify the notification responsibilities of the Commission. Subsection (h) is amended to clarify the revocation of licenses. Subsection (i) is amended to clarify the date of revocation. Subsection (j) is amended to reflect the effective date of these changes. Subsections (k), (l), and (m) have been deleted.

These amendments are necessary to reflect changes from the 80th Legislative Session by House Bill 488 to Texas Occupations Code, §1701.501.

The Commission has determined that there will be no employment impact will be for local governments for each year of the first five years the rule will be in effect.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying the revocation process for elected officials.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.501, Disciplinary Action and §1701.502, Felony Conviction or Placement on Community Supervision.

No other code, article, or statute is affected by this proposal.

§223.20. Revocation of License for Constitutionally Elected Officials.

(a) The commission shall immediately revoke any license issued by the commission to a constitutionally elected officer if the licensee is or has been convicted of a felony offense under the laws of this state, another state, or the United States as provided below. The revocation of any license held is effective immediately when the commission receives a certified copy of a court's judgment and issues notice to the licensee that any license held is revoked. Notice of revocation shall be sent via certified U.S. mail to the address shown on the Texas driver's license record of the licensee and to the address of the agency showing the licensee under current or last appointment.

(b) A constitutionally elected officer is convicted of a felony when an adjudication of guilt on a felony offense is entered against that officer by a court of competent jurisdiction regardless if:

(1) the sentence is subsequently probated and the officer is discharged from community supervision;

(2) the accusation, complaint, information, or indictment against the officer is dismissed and the officer is released from all penalties and disabilities resulting from the offense; or

(3) the officer is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(c) Except as provided by subsection (a) of this section, the commission may revoke the license of a constitutionally elected officer who is either convicted of a misdemeanor offense or placed on deferred adjudication community supervision for a misdemeanor or felony offense, if the offense directly relates to the duties and responsibilities of any related office held by that officer. In determining whether a criminal offense directly relates to such office, the commission shall, under this subsection, consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purpose for requiring a license for such office;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the officer previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.

(d) Revocation of a license shall permanently disqualify a constitutionally elected officer from licensing, and a license may not be reinstated except when the licensee proves the facts supporting the revocation have been negated, such as:

(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;

(2) the discharge under less than honorable conditions has been upgraded to honorable conditions;

(3) the report alleged to be false or untruthful was found to be truthful; or

(4) the section was not violated.

(e) During the direct appeal of any appropriate conviction for a misdemeanor offense that is found to be directly related to the duties and responsibilities of office, a license may be conditionally revoked pending resolution of the appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.

(f) The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the licensee that the facts supporting the revocation have been negated. If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting. If denied, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.

(g) Once a license has been revoked, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator or supervising authority of any agency shown to have the licensee under either current or latest appointment.

(h) The commission may revoke a license even though it has become inactive by some other means, such as:

(1) expiration;

(2) suspension;

(3) voluntary surrender;

(4) two-year break in service; or

(5) any other means.

(i) The date of revocation will be the earliest date that:

(1) a waiver was signed by the holder; or

(2) a final order of revocation was signed by the commissioners.

(j) The effective date of this section is July 6, 2009.

~~[(b) A deferred adjudication community supervision is not a felony conviction.]~~

~~[(c) A constitutionally elected officer is convicted of a felony when an adjudication of guilt on a felony offense is entered against that officer by a court of competent jurisdiction regardless of:]~~

~~[(1) the sentence is subsequently probated and the officer is discharged from community supervision;]~~

~~[(2) the accusation, complaint, information, or indictment against the officer is dismissed and the officer is released from all penalties and disabilities resulting from the offense; or]~~

~~[(3) the officer is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.]~~

~~[(d) Except as provided by subsection (a) of this section, the commission may revoke the license of a constitutionally elected officer who is either convicted of a misdemeanor offense or placed on deferred adjudication community supervision for a misdemeanor or felony offense, if the offense directly relates to the duties and responsibilities of any related office held by that officer. In determining whether a criminal offense directly relates to such office, the commission shall, under this subsection, consider:]~~

~~[(1) the nature and seriousness of the crime;]~~

~~[(2) the relationship of the crime to the purpose for requiring a license for such office;]~~

~~[(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the officer previously had been involved; and]~~

~~[(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.]~~

~~[(e) Revocation of a license shall permanently disqualify a constitutionally elected officer from licensing, and a license may not be reinstated except when the licensee proves the facts supporting the revocation have been negated, such as:]~~

~~[(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;]~~

~~[(2) the discharge under less than honorable conditions has been upgraded to honorable conditions;]~~

~~[(3) the report alleged to be false or untruthful was found to be truthful; or]~~

~~[(4) the section was not violated.]~~

~~[(f) During the direct appeal of any appropriate conviction, a license may be conditionally revoked pending resolution of the mandatory direct appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.]~~

~~[(g) The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the licensee that the facts supporting the revocation have been negated.]~~

~~[(h) If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting.]~~

~~[(i) If denied, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.]~~

~~[(j) Once a license has been revoked, the commission shall search its files and send, by regular mail, notice of the action to the chief administrator or supervising authority of any agency shown to have the licensee under either current or latest appointment.]~~

~~[(k) The commission may revoke a license even though it has become inactive by some other means, such as:]~~

~~[(1) expiration;]~~

~~[(2) suspension;]~~

~~[(3) voluntary surrender;]~~

~~[(4) two-year break in service; or]~~

~~[(5) any other means.]~~

~~[(l) The date of revocation will be the earliest date that:]~~

~~[(1) a waiver was signed by the holder; or]~~

~~[(2) a final order of revocation was signed by the commissioners.]~~

~~[(m) The effective date of this section is October 5, 2008.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901034
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Proposed date of adoption: July 6, 2009
For further information, please call: (512) 936-7713

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CHAPTER 229. TEXAS PEACE OFFICERS' MEMORIAL

37 TAC §229.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §229.3, Specific Eligibility of Deceased Texas Peace Officers. The title will be amended to reflect the title of Texas Government Code, §3105.003. Subsection (a) is amended to reflect changes to the Texas Government Code, §3105.003 and to clarify the eligibility requirements. Subsection (b) is amended to reflect the effective date of these changes.

These amendments are necessary to ensure that the Memorial requirements for eligibility are clear.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that Memorial requirements for eligibility are clear.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Government Code, Chapter 3150, §3105.003, Eligibility for Memorial.

No other code, article, or statute is affected by this proposal.

§229.3. Specific Eligibility of Memorial [~~Deceased Texas Peace Officers~~].

(a) An officer identified in §229.1 of this chapter [~~A deceased Texas peace officer~~] is eligible for inclusion on the memorial if the fatal incident:

(1) was a direct result of a line of duty, on or off duty incident;

(2) was an indirect result but directly attributed to a line of duty, on or off duty incident;

[~~(3) was a direct result of a line of duty, off duty incident;~~]

[~~(4) was an indirect result of but directly attributed to a lawful line of duty, off duty incident; or~~]

(3) [~~(5)~~] was a direct result of a felonious assault on the [~~Texas peace~~] officer, perpetrated because of the officer's status [~~as a Texas peace officer~~], regardless of duty status.

(b) The effective date of this section is July 6, 2009. [~~shall be August 1, 2001.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901039

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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37 TAC §229.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §229.5, Determination Standards. Subsections (a), (b), and (d) are amended to reflect changes to the Texas Government Code, §3105.003. Subsection (e) is amended to reflect the effective date of these changes.

These amendments are necessary to ensure that the Commission's rule is in compliance with the statute, which allows eligibility for federal law enforcement officers and municipal, county, or state corrections or detention officers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all eligible peace officers, federal law enforcement officers, and municipal, county, or state corrections or detention officers are recognized on the Texas Peace Officers' Memorial as authorized by Texas Government Code, §3105.003.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Government Code, Chapter 3150, §3105.003, Eligibility for Memorial.

No other code, article, or statute is affected by this proposal.

§229.5. Determination Standards.

(a) The commission, through its executive director, will receive documents and reports to establish a deceased [~~Texas peace~~] officer's eligibility for inclusion on the memorial.

(b) The executive director shall make every effort to confirm the authenticity of documents and information submitted to the commission and shall cause research to be conducted concerning the reported deaths of [~~Texas peace~~] officers.

(c) (No change.)

(d) The commission shall review the recommendations of the executive director concerning names of deceased [~~Texas peace~~] officers for inclusion on the memorial at a regularly scheduled meeting and make its final determination. The commission may waive rules for good cause in making its final determination, and nothing in this chapter shall be interpreted as limiting the commission's authority to determine inclusion or exclusion based on the facts of the incident.

(e) The effective date of this section is July 6, 2009. [~~as amended shall be March 1, 2001.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901040

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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37 TAC §229.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §229.7, Deaths Not Included. Subsections (a) and (b) are amended to reflect changes to the Texas Government Code, §3105.003. Subsection (c) is amended to reflect the effective date of these changes.

These amendments are necessary to ensure that the Commission's rule is in compliance with the statute, which allows eligibility for federal law enforcement officers and municipal, county, or state corrections or detention officers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of administering this section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all eligible peace officers, federal law enforcement officers, and municipal, county, or state corrections or detention officers are recognized on the Texas Peace Officers' Memorial as authorized by Texas Government Code, §3105.003.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no anticipated cost to small business, individuals, or both as a result of the proposed section.

Comments may be submitted electronically to public.comment@tcleose.state.tx.us or in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The amendment as proposed is in compliance with Texas Government Code, Chapter 3150, §3105.003, Eligibility for Memorial.

No other code, article, or statute is affected by this proposal.

§229.7. Deaths Not Included.

(a) An [~~A Texas peace~~] officer whose death is attributed to natural causes, is not eligible for inclusion, except when a medical condition arises out of a specific response to a violation of the law or an emergency situation causing an [~~a Texas peace~~] officer's death, or causing the [~~Texas peace~~] officer's death during or after a period of hospitalization following the specific response to the violation of the law or emergency situation.

(b) An [~~A Texas peace~~] officer whose death is attributed to any of the following is not eligible for inclusion:[~~.~~]

(1) when caused as a result of or during the [~~Texas peace~~] officer's commission of a crime;

(2) as a direct result of the [~~Texas peace~~] officer's voluntary alcohol or controlled substance abuse; or

(3) when caused by the [~~Texas peace~~] officer's intention to bring about the [~~Texas peace~~] officer's own death.

(c) The effective date of this section is July 6, 2009. [~~shall be March 1, 2001.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901041

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Proposed date of adoption: July 6, 2009

For further information, please call: (512) 936-7713

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 190. DISCIPLINARY GUIDELINES

SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board withdraws the proposed amendment to §190.8, which appeared in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7964).

Filed with the Office of the Secretary of State on March 13, 2009.

TRD-200901065
Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Effective date: March 13, 2009
For further information, please call: (512) 305-7016

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.23

The Texas Department of Housing and Community Affairs (TDHCA or the Department) adopts an amendment to §1.23 concerning 2009 State of Texas Low Income Housing Plan and Annual Report (SLIHP) with changes. The proposed amendment was published in the January 2, 2009, issue of the *Texas Register* (34 TexReg 15). The section adopts by reference the annual State of Texas Low Income Housing Plan and Annual Report. The purpose of the SLIHP is to serve as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. The document reviews the Department's programs, current and future policies, resource allocation plan to meet state housing needs, and reports on 2008 performance. The Department is required to submit the SLIHP annually to its Board of Directors in accordance with §2306.072 of the Texas Government Code.

The TDHCA Board of Directors approved the final 2009 SLIHP at the March 2009 board meeting. The 2009 SLIHP will become effective 20 days after being filed in the Office of the Secretary of State.

No comments were received regarding adoption of the rule. The final document approved by the Board of Directors on March 12, 2009 included updated performance numbers and other minor administrative corrections.

The amendment is adopted pursuant to the authority of the Texas Government Code, §2306.0723 which requires the Department to follow rulemaking procedures in developing the report.

No other statutes, articles, or codes are affected by the amended section.

§1.23. State of Texas Low Income Housing Plan and Annual Report (SLIHP).

The Texas Department of Housing and Community Affairs (the Department) adopts by reference the 2009 State of Texas Low Income Housing Plan and Annual Report (SLIHP). The full text of the 2009 SLIHP may be viewed at the Department's website: www.tdhca.state.tx.us. The public may also receive a copy of the 2009 SLIHP by contacting the Department's Housing Resource Center at (512) 475-3976.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 16, 2009.

TRD-200901083
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 5, 2009
Proposal publication date: January 2, 2009
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DISCOUNT HEALTH CARE CARD PROGRAM

16 TAC §84.70, §84.73

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code ("TAC") Chapter 84, §84.70 and §84.73. Section 84.70, regarding discount health care card program operators, is adopted with changes as published in the November 28, 2008, issue of the *Texas Register* (33 TexReg 9640) and will be republished. Section 84.73 is adopted without changes as published and will not be republished. The amendments to §84.70 and §84.73 take effect April 1, 2009.

Background. Health and Safety Code, Chapter 76 ("the statute") currently requires program operators to register annually with the Department in order to do business in Texas. Program operators may sell their discount health care card programs directly to consumers or they may contract with marketers to solicit and sell these programs. Many of the program operators contract with marketers to sell these discount health care card programs; however, the statute does not give authority to the Department to register or to directly regulate marketers and/or private label entities that market and sell these cards in the state.

As a result of this regulatory structure, there has been confusion and a lack of information about which program operator is responsible for a particular program or is responsible for the activities of particular marketers. These rule amendments are necessary to address issues associated with program operators' marketing and membership materials.

Amendments. Health and Safety Code §76.053 and §76.054 require program operators to disclose and provide a variety of information to consumers including program membership materials and membership cards. The rules at §84.70, Responsibility of the Registrant--General, provide the details regarding these disclosures and written materials. As proposed, the amendments added a new subsection (c) to rule §84.70, which would require the name of the discount health care card program operator to be clearly and conspicuously identified on all discount health care card program materials used by the program operator or its marketers, including all membership cards. As a result of public comments, rule §84.70(c) as adopted requires the name of the discount health care card program operator to be clearly and conspicuously identified on all discount health care card program materials, with the exception of membership cards issued under a private label name.

Health and Safety Code §76.052 prohibits advertising that is false or misleading; however, under the statute, program operators may use marketers to sell their programs or may allow marketers to private label the programs, and many do. Because of this business practice, it is often not clear in the advertising materials who the program operator is. The materials may identify the marketer's name or the private label name of the program, but they may not identify the name of the entity that is ultimately responsible for the discount health care card program and that is required to be registered with the Department.

The amendments to rule §84.73, Responsibilities of the Registrant--Statements, Representations, and Advertising, add a new subsection (c). This new subsection requires all discount health care card program advertising to clearly and conspicuously identify the program operator, even if the program is being promoted by a marketer or if the program has a private label name. This requirement applies regardless of the form of the advertising and regardless of who disseminates or distributes the advertisement. No changes were made to rule §84.73(c) as a result of public comments.

Public Comments. The proposed rules were published in the *Texas Register* on November 28, 2008. The public comment period closed on December 29, 2008. The Department received one comment letter from the Consumer Health Alliance (CHA), a trade association of the discount health care industry. CHA also offered comments at the public meeting held on February 3, 2009, where the proposed rules were being considered for adoption by the Commission. Below is a summary of the public comments and the Department's responses to the comments.

CHA Comment: CHA submitted comments that "CHA companies have a strong interest in ensuring that their members have clear information about the program they are joining. As a result, CHA companies always provide extensive disclosures and information about program terms and conditions to consumers." Furthermore, "CHA members always include the name of the program operator on the membership materials that new members receive, even when the program is sold by a marketer. This practice ensures that no consumer confusion will exist."

TDLR Response: TDLR appreciates that the CHA companies provide extensive information to their members, and that these program operators include their names on their materials. TDLR appreciates that CHA recognizes that this practice helps eliminate consumer confusion. It should be noted, however, that CHA does not represent all of the program operators that are registered and doing business in Texas. While some operators may already be providing this important information, and TDLR thinks that many are, TDLR wants to ensure that all current and future program operators do the same.

CHA Comment: CHA questions the basis for making the amendments and believes that based on its experience there is not any consumer confusion due to consumers only knowing the name of the private label marketer that is selling the program but not the name of the program operator. CHA states that of the official complaints filed with TDLR, "none of them concerned confusion over the identity of the program operator."

TDLR Response: While TDLR appreciates CHA's experience, its experience is not that of a state agency regulating this industry. While CHA requested information from the Department regarding complaints, the Department does not set policy based only on official complaints. The Department receives numerous inquiries and questions from a number of sources. These inquiries and questions do not have to result in a formal complaint in order for the Department to take notice of an issue. Since this is a relatively new program, the Department continues discussions on how to best regulate this industry.

CHA Comment: CHA stated that it "is difficult to imagine any negative consequences that stem from a consumer not knowing the name of the program operator. The marketer is required by statute to provide a website with program information and a toll-free number to handle questions and complaints. If those things are provided, the consumer should be satisfied--whether the website and toll-free number are operated by the marketer or the program operator. The consumer needs to get customer service and the ability to file complaints when he or she is not getting the promised benefits of the program. The name of the program operator does not matter to the consumer."

TDLR Response: While marketers are required to comply with advertising practices just as program operators are, marketers are not registered with TDLR. In addition, marketers are not required by statute to provide a website with program information and a toll-free number to handle questions and complaints. It is the program operator who is required to do these things under Health and Safety Code §76.053 and §76.054. Because it is the program operator who is ultimately responsible for the program, it is the program operator who should be identified to the consumer.

TDLR disagrees that there would not be any negative consequences that stem from a consumer not knowing the name of the program operator. TDLR publishes information on its website about enforcement actions it takes against the entities that it regulates. The Department does this for the benefit of the public, especially as members of the public search for licensees or registrants with whom to engage in business transactions. In the Discount Health Care Card Program, the program operators are the entities that are registered and regulated by the Department. If a consumer is holding a private label name card or a card that only identifies the marketer's name, the consumer will not know if and when the program operator who is responsible for the program has violated the applicable statutes and rules. When a consumer checks the TDLR website to see if any registered entity has a violation against it, the consumer will only see the program operator's name, not the marketer's name or the private label name that is known to the consumer. Consequently, a program operator that issues private label name cards and that has enforcement actions against it could continue to sell discount cards under a new private label name without the public knowing that the same program operator is behind the various

cards. TDLR believes that the name of the program operator does matter to consumers.

CHA Comment: CHA also questions whether having the name of the program operator on the discount card that consumers show to providers at the time of service is helpful to providers. CHA states that program operators "typically contract with provider networks that, in turn, contract directly with providers. The provider will recognize the name of the provider network, but will not recognize the name of either the program operator or the marketer since the provider has no direct contract with either of these entities."

TDLR Response: The statute allows program operators to contract with provider networks, individual providers, and even other program operators who have their own provider contracts to provide health care services. While CHA's members may only contract with provider networks, this may not be the case for all current and future program operators.

CHA Comment: CHA also questions TDLR's assertion that having "the program operator's name on all program materials will reduce the time and resources TDLR spends on investigating complaints concerning marketers, since TDLR will quickly be able to identify the program operator associated with the marketer." CHA states that TDLR already has this information under the current statute and rules.

TDLR Response: CHA is correct in that Health and Safety Code §76.101(b)(4) requires the program operator to file with TDLR "a list of the marketers authorized to sell or distribute the program operator's program under the program operator's name and a list of the marketing entities authorized to private label the program operator's program." It is also true that under existing rule §84.20(a)(1)(C) the program operator is required to file with TDLR "all private label names used for each discount health care card program."

The problem with these lists is that as of September 1, 2008, one year after the industry became regulated, there were over 40,000 marketers selling discount health care cards in Texas. While operators are required to report the lists of their marketers to TDLR, each program operator submits its lists of marketers in a different format. There is not an electronic database into which program operators enter the lists of marketers. Even if there was an electronic database of marketers, similar to that used for TDLR's licensees and registrants, the database search functions require that names be exact. If a program operator has a typographical mistake in its submission or the operator submits a variation on the marketer's name, the name of the program operator tied to that marketer will not be identified. Having to search the list manually is time consuming due to the size of the lists and the various formats, and it does not necessarily guarantee a match of program operator to marketer based on name variations. Searching through lists of 40,000 marketers to find the name of the program operator behind a particular program and/or marketer is not an efficient way to regulate the industry.

The other problem is that the lists of marketers and private label names submitted by the program operators are not current. Some program operators are adding marketers and/or private label names for their programs every day. Currently under rule §84.75, the list of marketers must be updated every six months, and the list of private label names must be updated within 30 days of any change. While TDLR considered amending this rule to have the operators update the lists of marketers and private label names more often, that type of change would put more of an ongoing administrative burden on both the Department and the industry and it would not eliminate the problem of searching through lists of thousands of marketers and/or private label names. TDLR has determined that a simpler and more efficient method to identify the program operator, which TDLR is charged with regulating, is to simply put the program operator's name on the membership and marketing materials.

CHA Comment: CHA questioned the statutory authority of the Commission and the Department to adopt the proposed amendments regarding membership materials, including membership cards. CHA points to the lists of information and materials required to be given to consumers found in the statute at Health and Safety Code §76.053 and §76.054. CHA states that these sections "do not mention anything about the name of the registered program operator" being provided to consumers, "[nor] do they authorize TDLR to add any additional disclosures or duties as TDLR may reasonably see fit."

TDLR Response: Health and Safety Code §76.003 requires the Commission to "adopt the rules necessary to implement" Chapter 76. Similar authorization is found in Occupations Code Chapter 51, the enabling statute of the Commission and the Department. The rules provide the details to the framework of the statute; the rules are not a recitation of the statute itself. Health and Safety Code §76.053 and §76.054 require program operators to provide certain information and materials to consumers. The list of information to be provided to consumers is not exclusive or exhaustive. The Legislature has given rulemaking authority to the agency to implement the statute that requires registration and regulation of the program operators. TDLR believes that it has a sound basis under the statute to require program operators to identify themselves in membership materials, since it is the program operators who are responsible for the programs and responsible to the consumers.

CHA Comment: CHA also questioned the statutory authority of the Commission and the Department to adopt the proposed amendments regarding the advertising materials. CHA points to the list of prohibited advertising practices found in the statute at Health and Safety Code §76.052. CHA states that "[failure] to include the name of the registered program operator on an advertisement is not mentioned as a false, misleading, or deceptive statement."

TDLR Response: Health and Safety Code §76.003 and Occupations Code §51.203 give rulemaking authority to the Commission to adopt the rules necessary to implement the statute. In addition, Occupations Code §51.204 allows the Commission to adopt rules to prohibit false, misleading, or deceptive practices. The issue regarding whether the list of prohibited practices in the statute is exclusive was raised by CHA when the original rules were proposed and adopted in 2007. The Department reiterates that the lists of prohibited adverting practices in the statute and in the current rules are examples of prohibited practices and are not exhaustive lists.

TDLR believes that by its very nature it is misleading and deceptive for a marketer to have its name, but not the name of the program operator, on advertising materials that promote the sale of a program that is operated by and is the responsibility of the program operator.

CHA Comment: CHA stated that its members "always include the name of the program operator on the membership materials that new members receive, even when the program is sold by a marketer." CHA stated that it was impractical, however, to

include the name of the program operator on the discount card itself because there was not sufficient room on the card.

TDLR Response: While discount health care cards may include a variety of information on the card itself, currently the only requirement of what is included on the card is a clear and conspicuous statement that the program is not insurance. For those programs that have a prescription drug benefit, an identification number, group number, and telephone number for prescription drug benefits is also required. There should be sufficient room on the card to identify the program operator. In fact, many program operators already include their names on the cards.

CHA Comment: CHA further commented that including both the name of the marketer and the program operator on the membership card "is likely to confuse, not help, consumers, since consumers will be unsure which of the two entities is responsible for the program."

TDLR Response: It is the program operator, not the marketer, who is responsible for the program, and it is the program operator's name that should be on the card. The program operator is the one who is required to register with the Department, to provide program materials to consumers, to post financial security, to keep records and file reports, to have contracts with providers, and to collect a fee from members either directly or indirectly. The identity of the program operator should be revealed.

CHA Comment: CHA raised concerns about the costs of re-issuing membership cards to current members in Texas. CHA stated that its program operators have more than 3 million members in Texas, although CHA did not provide exact figures on the number of membership cards that do not currently have the program operator's name on the card and that would have to be re-issued. CHA stated that most of the marketers operating in Texas would be individuals who are marketing the program operator's card under the program operator's name. A much smaller number of marketers issue membership cards under a private label name that is different from the name of the program operator.

TDLR Response: TDLR believes that since the program operator is the only entity that is registered with TDLR and is the entity that is contractually, financially and legally responsible for the programs, the program operator's name should be on the membership cards. That being said, TDLR agreed to amend the current proposal at §84.70 as it relates to membership cards, but revisit the issue in the future when more accurate information regarding the number of membership cards that would have to be re-issued and the costs for re-issuing those cards could be obtained from CHA's member companies and the other program operators in Texas. The adopted rule §84.70 will not require the program operator's name be included on membership cards that are issued under a private label name. The program operator's name still must be included on all other program materials, even for those programs with a private label name. The program operator's name also must be included on membership cards issued under the program operator's own name.

CHA Comments: CHA stated that including "the name of the program operator on advertising is also impractical. For those small number of program operators who contract with many private label marketers, hundreds of thousands if not millions of pieces of advertising would potentially need to be discarded, redesigned, and reprinted with the program operators' name." CHA further stated that including the name of the marketer and the program operator on the advertising would be confusing to consumers.

TDLR Response: As recognized by CHA, a small number of program operators may be affected by this change. Based on the number of program operators who already identify themselves on membership and marketing materials, the Department anticipates very minimal costs to all program operators who are required to comply with the amendments. As with the membership materials, TDLR believes there is a significant benefit to consumers and to the Department for the program operator who is responsible for the program to be identified on the program advertising materials. TDLR did not make any changes to rule §84.73 as proposed based on the public comments.

The amendments are adopted under Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 76, both of which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51, and Texas Health and Safety Code, Chapter 76. No other statutes, articles, or codes are affected by the adoption.

§84.70. Responsibility of the Registrant--General.

(a) No later than 15 days after enrolling a new member, a discount health care card program operator shall provide each new member a membership card and the written materials described in §76.053 of the Act, which shall include:

(1) clear and conspicuous statements that:

(A) the discount health care card program is NOT insurance; and

(B) the member may cancel the membership within 30 days after joining the discount health care card program and the member will receive a refund of all membership fees paid to the discount health care card program other than money paid as a nominal one-time enrollment fee or money paid by the member to a provider for health care services or products received;

(2) the following clear and conspicuous statement: "Note to Texas Consumers: Regulated by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; telephone 1-800-803-9202 or (512) 463-6599; website: www.license.state.tx.us/complaints."; and

(3) the written cancellation policy under subsection (b).

(b) A discount health care card program operator shall have a written cancellation policy which:

(1) identifies the valid cancellation notice used for the program;

(2) provides clear and conspicuous instructions to members regarding how to use the cancellation method(s);

(3) provides for a refund of all membership fees paid by a new member when the member submits to the program operator a valid cancellation notice no later than 30 days after the member receives the membership card; and

(4) states that the program operator will accept and cancel program memberships at any time during the membership period and that the program operator will cease collecting membership fees in a reasonable amount of time, but no later than 30 days after receiving a valid cancellation notice.

(c) A discount health care card program operator shall clearly and conspicuously identify itself on all discount health care card pro-

gram materials that are used by the program operator or its marketers, excluding membership cards issued under a private label name.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 12, 2009.

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Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING EARLY CHILDHOOD EDUCATION PROGRAMS

19 TAC §102.1002

The Texas Education Agency (TEA) adopts new §102.1002, concerning the Prekindergarten Early Start Grant Program. The new section is adopted with changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8863). The adopted new rule implements the Texas Education Code (TEC), §29.155, that authorizes the commissioner of education to establish procedures and adopt rules for the administration of grant awards for kindergarten and prekindergarten programs.

The 76th Texas Legislature established a grant program that provides funding to districts interested in implementing or expanding their prekindergarten program. The TEA has administered prekindergarten grant awards in accordance with the TEC, Chapter 29, Subchapter E, since 1999. The TEC, §29.155, authorizes the commissioner to adopt rules to administer kindergarten and prekindergarten grants. The TEC, §29.1533, requires a school district, before establishing a new prekindergarten program, to consider the possibility of sharing use of an existing Head Start or other child care program site as a prekindergarten site.

The adopted new 19 TAC §102.1002 implements TEC, §29.155, by establishing in rule new procedural and reporting requirements for prekindergarten grants to school districts, open-enrollment charter schools, and education service centers operating as the fiscal agent of a shared services arrangement. The adopted new rule includes provisions to define applicable words and terms; sets forth requirements for eligibility, application, and notification; establishes details relating to funding, including required percentage distributions, allowable and unallowable expenditures, and subsequent funding; provides conditions of operation; and addresses exemptions, technical assistance, evaluation, revocation, and recovery of funds. The adoption also stipulates that the funding structure will be implemented beginning with the 2009-2010 school year.

In response to public comments on proposed new 19 TAC §102.1002, Prekindergarten Early Start Grant Program, the following changes were made at adoption.

Subsection (a), relating to definitions, was modified to state more clearly the eligibility requirements for the three tiers of funding. Language in paragraph (16) was rearranged to clarify that a Tier 1 applicant is eligible if its Grade 3 Texas Assessment of Knowledge and Skills (TAKS) performance averaged for the last three consecutive years is substantially below the state average over this same time period. Language in paragraph (17) was rearranged to clarify that a Tier 2 applicant is eligible if its Grade 3 TAKS performance averaged for the last three consecutive years is above the state average in both reading and mathematics over this same time period. Paragraph (17) was also modified to remove the requirement relating to school readiness components in subparagraph (B). Language in paragraph (18) was rearranged to clarify that a Tier 3 applicant is eligible if its Grade 3 TAKS performance averaged for the last three consecutive years is below the state average over this same time period. Grant programs operated under Tiers 2 and 3 will be phased out after each tier's initial cycle and all grants will eventually operate under Tier 1 criteria.

Subsection (e), relating to funding, was modified to add consideration of the percentage of educationally disadvantaged students served in a district.

Subsection (j), relating to exemptions, was modified in paragraph (3) to clarify that an exemption from the school readiness certification system extends to conditions of operation of the program.

The adopted new rule provides guidelines and procedures for school districts and open-enrollment charter schools to follow in order to apply for the Prekindergarten Early Start Grant Program. Grantees must agree to submit all information, application materials, and reports required by the agency.

Applicants for the Prekindergarten Early Start Grant Program will be required to provide details relating to grant eligibility as part of the Request for Application, in accordance with the TEC, §29.155, including needs-assessment data for eligible prekindergarten children in the service delivery area projected to be served with grant funds. In addition, applicants will be required to provide evidence of local partnership agreements for delivery of a mixed-service model among the applicant, Head Start program, and child care program providers.

Grantees under the Prekindergarten Early Start Grant Program will be required to provide the TEA annual evaluations concerning student performance and program impact as a result of grant activities, as well as continuation eligibility data based on accomplished goals and objectives each year of the grant cycle.

Local school districts and open-enrollment charter schools will be required to maintain documentation of the following: (1) a community-wide needs assessment of eligible prekindergarten children in Head Start and subsidized child care programs; (2) a description of the structure of the early childhood instructional component, including student screening and assessment process and the number of instructional hours provided by certified teaching personnel; (3) a description of the partners or collaborators that have entered into a collaborative agreement to develop and carry out a school readiness integration plan; (4) a district plan for sustainability after grant funds cease; and (5) a description of the evaluation plan or design for monitoring the implementation of the program on an ongoing basis and for

determining whether the program met its stated goals and objectives and achieved the desired results based on established performance indicators.

The TEA determined that the new section will have no adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period began October 31, 2008, and ended December 1, 2008. A number of individuals, including school officials, teachers, parents, students, and other interested organizations, submitted comments and inquiries regarding the Prekindergarten Early Start Grant Program. In addition, a public hearing was held on November 13, 2008, in Austin, Texas, to receive public comment on the proposed new rule. A summary of the public comments received and corresponding agency responses regarding proposed new 19 TAC Chapter 102, Educational Programs, Subchapter AA, Commissioner's Rules Concerning Early Childhood Education Programs, §102.1002, Prekindergarten Early Start Grant Program, are as follows.

APPLICANT ELIGIBILITY AND FUNDING

Comment. Representatives of Copperas Cove Independent School District (ISD), Natalia ISD, and Wichita Falls ISD and an individual commented that eligibility under the proposed rule does not take into account the hardships experienced by districts that have high percentages of educationally disadvantaged prekindergarten students.

Agency Response. The agency agrees and has modified 19 TAC §102.1002(e) to add funding allocation criteria that takes into account the percentage of educationally disadvantaged enrollment.

Comment. Huntsville ISD administrators, the Texas Association of School Boards (TASB), and the Texas Early Childhood Education Coalition (TECEC) recommended that "all districts be eligible to apply for the Prekindergarten Early Start (PKES) Grant Program."

Agency Response. The agency disagrees. The PKES grant rule better aligns eligibility and funding levels with applicable statutory requirements in the TEC, §29.155(d), which require the commissioner to give priority to districts and charter schools in which the level of performance of students on the assessment instruments administered under the TEC, §39.023, in Grade 3 is substantially below the average level of performance on those assessment instruments for all school districts in the state.

Comment. The Texas Association of School Administrators (TASA), TASB, and a Spring Branch ISD board member recommended that while all districts should be held accountable for student performance and finances, the sustainability plan should be eliminated as it discourages districts from expanding their programs.

Agency Response. The agency disagrees. The intent of a sustainability plan is to ensure long-term planning and solutions for prekindergarten services and to ensure districts plan for expanding the program to meet the ongoing needs of the district after the grant ends. In addition, the PKES grant program is intended to be a supplemental source of funds for the purposes of: (1) operating an existing half-day prekindergarten program on a full-day basis; or (2) implementing a prekindergarten program at a campus that did not have a prekindergarten program.

Comment. The superintendent of Spring Branch ISD commented that Tier 2 should reflect the average of the last three years of Texas Assessment of Knowledge and Skills (TAKS) scores rather than "demonstrated improved performance."

Agency Response. The agency agrees and has modified language in 19 TAC §102.1002(a)(16) - (18) to state more clearly the eligibility criteria for each tier of funding.

Comment. More than 460 representatives of Spring Branch ISD, including teachers, administrators, board members, parents, children, and community members, and representatives of Austin ISD, Belton ISD, Booker ISD, Corpus Christi ISD, Eustace ISD, Fort Worth ISD, George West ISD, Hidalgo ISD, Houston ISD, Kaufman ISD, Killeen ISD, O'Donnell ISD, West ISD, Wichita Falls ISD, Yorktown ISD, the Department of the Army, Hill Country Community Action Association Inc., the Texas American Federation of Teachers (Texas AFT), TASA, and TASB commented that the proposed three-tiered funding system would potentially drastically reduce funding for successful programs like the programs that have been implemented by districts administering Prekindergarten Expansion grants and asked that the rule be rewritten to maintain funding for such programs.

Agency Response. The agency disagrees that the rule should be rewritten to maintain level funding for successful programs. New 19 TAC §102.1002 better aligns eligibility and funding levels with applicable statutory requirements in the TEC, §29.155(d), which require the commissioner to give priority to districts and charter schools in which the level of performance of students on the assessment instruments administered under the TEC, §39.023, in Grade 3 is substantially below the average level of performance on those assessment instruments for all school districts in the state. In response to public comment, however, language was modified in 19 TAC §102.1002(a)(16) - (18) to state more clearly the eligibility criteria for each tier of funding.

Comment. A taxpayer and community member of Spring Branch ISD commented that he welcomed the cut in funding for the PKES grant program.

Agency Response. The agency disagrees. Although the rule proposes a new funding structure, it does not cut funding from the PKES grant program. The modification in the funding structure better aligns the PKES grant program with statutory requirements in TEC, §29.155.

Comment. Representatives of O'Donnell ISD and San Marcos CISD commented that school districts never know how much funding they will receive when they apply for the grant and that it would be nice to see the grant awarded with the true amount indicated.

Agency Response. The agency disagrees that exact funding levels for individual grant awards should be included in the rule. The rule does not indicate an exact amount of funding for individual grantees, since funding amounts change with each grant cycle based on appropriations, available funding, and the number of applicants that apply for the grant. However, an eligibility list with projected maximum grant award amounts was posted to the TEA website during the comment period for the rule proposal. All applicants that are awarded the grant will receive a notice of grant award with an exact award amount indicated. This award amount will remain the same for grantees for each year of the grant period so that grantees will be able to plan appropriately. In addition, a sustainability plan is a required part of the applica-

tion to encourage awardees to reduce their dependence on state funding for supplemental prekindergarten services.

Comment. The superintendent of Huntsville ISD commented that the TEA should not continue to fund Tiers 2 and 3 as those grantees have been recipients of the PKES grant program for the past nine years.

Agency Response. The agency disagrees. The agency solicited extensive stakeholder input before modifying the current funding structure and proposing this rule. The rule better aligns with priorities in the TEC, §29.155, while, at the same time, taking into account stakeholder feedback. In response to public comment, however, language was modified in 19 TAC §102.1002(a)(16) - (18) to state more clearly the eligibility criteria for each tier of funding.

Comment. School district administrators of Corpus Christi ISD, Eustace ISD, and Spring Branch ISD commented that consideration should be given to TAKS scores only of the student groups primarily served in prekindergarten (economically disadvantaged and limited English proficient) and that the grant should allow large districts to use TAKS scores of the campuses with prekindergarten programs rather than scores for the entire district.

Agency Response. The agency disagrees. TEC, §29.155(d), states that in awarding grants under this section, the commissioner shall give priority to districts and open-enrollment charter schools in which the level of performance of students on the assessments instruments under the TEC, §39.023, in Grade 3 is substantially below the average level of student performance on those assessment instruments for all school districts in the state.

Comment. More than 460 representatives of Spring Branch ISD, including teachers, administrators, board members, parents, children, and community members, and a representative of William Smith, Sr., Tri-County Child Development Council, Inc. commented that a district should not have to fail its students for three years in order to access PKES grant funding. The representatives stated that successful prekindergarten programs should be encouraged and financially supported to continue the fine work they have been doing.

Agency Response. The agency agrees that a district that has demonstrated success should not have to fail its students in order to meet funding eligibility. However, through this rule, the agency is better aligning eligibility and funding levels with the priorities established in the TEC, §29.155(d). In response to public comment, however, language was modified in 19 TAC §102.1002(a)(16) - (18) to state more clearly the eligibility criteria for each tier of funding.

Comment. A school district administrator of Spring Branch ISD shared concern that the agency is considering not funding the current Spring Branch ISD prekindergarten program.

Agency Response. The agency disagrees. As a recipient of Prekindergarten Expansion grant funding since 1999 through the 2008-2009 school year, Spring Branch ISD has received funding for full-day prekindergarten services. Beginning in 2009-2010, the PKES grant rule establishes a new mechanism and funding structure under which Spring Branch ISD will continue to be eligible as a Tier 2 applicant. Under the new funding structure and implementation requirements for the PKES grant, a Tier 2 applicant is a district or charter school whose average Grade 3 TAKS performance for the last three consecutive years is above state average in reading and mathematics and has previously received Prekindergarten Expansion Grant funding and participated in Cycle 14 (school year 2008-2009). Funding will be provided for a period not to exceed three years from year one of grant application approval and will be based on annual accomplishment of grant objectives and requirements set forth in the application in subsequent years of the three-year cycle. In response to public comment, language was modified in 19 TAC §102.1002(a)(16) - (18) to state more clearly the eligibility criteria for each tier of funding.

COORDINATION OF SERVICES

Comment. More than 460 representatives of Spring Branch ISD, including teachers, administrators, board members, parents, children, and community members; administrators from Booker ISD, Edna ISD, Hidalgo ISD, Wolfe City ISD, and Yorktown ISD; and Texas AFT commented that while partnerships with outside providers are an admirable goal, it should not be mandated and asked that the rule be modified to leave the decision to partner with an outside provider within the local control of the district and its community school board and administrators.

Agency Response. The agency disagrees. The rule implements the statutory requirements of the TEC, §29.158 and §29.1533. TEC, §29.158, requires coordination among prekindergarten programs, Head Start programs, and child care providers to ensure, to the extent practicable, that full-day, full-year child care services are available to meet the needs of low-income parents who are working or participating in workforce training or workforce education and for the purpose of providing cost-effective care for children during the full workday with developmentally appropriate curriculum. In addition, the TEC, §29.1533, requires that before establishing a new prekindergarten program, a school district shall consider the possibility of sharing use of an existing Head Start or other child care program site as a prekindergarten site.

Comment. An administrator of Booker ISD maintained that there are no available child care programs in the community with which to partner and expressed concern about having to implement the school readiness integration model to be compliant with the program.

Agency Response. The agency agrees. New 19 TAC §102.1002(j) provides for an exemption for districts if Head Start and/or licensed child care programs required for school readiness integration planning are unavailable in a local community. In response to public comment, language was modified in 19 TAC §102.1002(j)(3) to clarify that an exemption from the school readiness certification system extends to conditions of operation of the program.

Comment. Representatives of The Children's Courtyard, the Texas Licensed Child Care Association (TLCCA), and the Texas Migrant Council (TMC) expressed their support for the proposed rule and extended their appreciation to the commissioner of education for championing the development of integrated partnerships. They established that while collaboration with school districts has been challenging, integrated partnerships can work and through established partnerships school districts can use existing capacity and infrastructure while ensuring program quality and accountability in a cost-effective manner. They encouraged further promotion of school-community partnerships by rewarding grant applications that include collaborations and that the TEA provide information to school officials about how to find local early partners to develop high-quality programs.

Agency Response. The agency agrees. New 19 TAC §102.1002(h)(3) requires each grantee to collaborate in a school readiness integration partnership as established in its grant application. In coordinating school readiness services, grantees are required to establish partnerships with local Head Start and licensed child care providers and through mutual agreement commit proven school readiness components that are aligned with the Texas Prekindergarten Guidelines.

CURRICULUM AND INSTRUCTION

Comment. An administrator of Spring Branch ISD commented that each district should be allowed to create and implement the prekindergarten curriculum that fulfills the needs of the district.

Agency Response. The agency agrees that districts should be allowed to create and implement curriculum that meets district needs. Applicants selected for PKES grant program funding must use curriculum materials that are developmentally appropriate and consistent with the Texas Prekindergarten Guidelines to the extent practicable. Teachers must have access to continuing, appropriate professional development. Services must be delivered in collaboration with other local entities providing prekindergarten services, including public and private child care facilities and Head Start programs, to ensure that eligible prekindergarten students receive coordinated, high-quality services.

Comment. Representatives from Huntsville ISD, San Marcos CISD, TLCCA, and TMC commented favorably of their experience and implementation of the Texas Early Education Model (TEEM) and their participation in the school readiness certification system. Huntsville ISD commented that in collaboration with Head Start and through the TEEM grant, students of Huntsville ISD are entering kindergarten with a common base of "readiness." San Marcos CISD commented that the training received through the State Center for Early Childhood Development (SCECD) to implement TEEM has been helpful and stated that both school district and Head Start students and teachers have benefitted and collaborated to provide high-quality services.

Agency Response. The agency agrees. The rule is designed to encourage implementation of high-quality early childhood programs and during the discretionary grant cycle, grant participants will be required to participated in the school readiness certification system in accordance with the TEC, §29.161.

EVALUATION

Comment. More than 460 representatives of Spring Branch ISD, including teachers, administrators, board members, parents, children, and community members, commented that the new rule requires each grantee to develop a sustainability plan that must include participation in the school readiness certification system and that participation in the school readiness certification system is voluntary under the law.

Agency Response. The agency disagrees that the rule requires grantees to develop a sustainability plan that includes participation in the school readiness certification system beyond the discretionary grant cycle. The agency agrees that participation in the school readiness certification system is voluntary under the TEC, §29.161; however, under the PKES discretionary grant, participation in the school readiness certification system is a required activity. In accordance with the TEC, §29.161, the school readiness certification system is a research-based system provided by the SCECD. All applicants selected for the PKES grant program funding will submit data into a web-based application with the goal of defining each grantee's record of cognitive, social, and emotional development of young children. The purpose of requiring participation in the school readiness certification system is to evaluate the effectiveness of the grantee's prekindergarten program in preparing all children for kindergarten.

Comment. The superintendent of Spring Branch ISD commented that the exemption to participate in the school readiness certification system should also apply to conditions of operation.

Agency Response. The agency agrees and has modified 19 TAC §102.1002(j) to reflect that an approved exemption also applies to conditions of operation specified in 19 TAC §102.1002(h)(3)(A).

Comment. The Texas Association of Business (TAB) expressed strong support of the proposed rule. The TAB commended the commissioner of education and the TEA for the strong stand for quality in the rules as published.

Agency Response. The agency agrees. The rule is designed to encourage implementation of high-quality early childhood programs.

Comment. The TAB commented that it strongly supports the requirements for grantees to use proven school readiness components and participate in the school readiness certification system. The TAB stated that the school readiness certification system informs parents, the public, and administrators about the effectiveness of prekindergarten programs using proven research and classroom techniques that together provide a definition of a quality early childhood school readiness program.

Agency Response. The agency agrees. In compliance with the TEC, §29.161, the agency is requiring grant participants, during the discretionary grant cycle, to participate in the school readiness certification system, as adopted by P-16 Council established under the TEC, §61.076.

The new rule is adopted under the TEC, §29.155, which authorizes the commissioner to adopt rules to administer kindergarten and prekindergarten grants.

The adopted new rule implements the TEC, §§29.1533, 29.155, 29.158, and 29.161.

§102.1002. Prekindergarten Early Start Grant Program.

(a) Definitions. The following words and terms when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) Eligible student--A child is eligible for enrollment in a prekindergarten class under this section if the child is at least three years of age and meets eligibility criteria consistent with the Texas Education Code (TEC), §29.153.

(2) Licensed child care--Child care that meets the requirements adopted by the Texas Department of Family and Protective Services under the Human Resources Code, §42.002(3).

(3) Nonprofit--An organization that meets the requirements of the United States Code, Title 26, Subtitle A, Chapter 1, Subchapter F, Part I, Section 501(a).

(4) Partner--A non-public school organization collaborating with a public school to provide an educational component to eligible prekindergarten children.

(5) Prekindergarten Early Start Grant Program--A program established in accordance with the TEC, §29.155, to administer grant funds to implement and expand prekindergarten programs. This grant

program was formerly known as the Prekindergarten Expansion Grant Program.

(6) Prekindergarten site--A public or non-public school classroom where teachers work with three- and four-year-old children in a prekindergarten school readiness program.

(7) Proven school readiness components--The components of proven school readiness are:

(A) a high-quality, developmentally appropriate, and rigorous curriculum;

(B) continuous monitoring of student progress in the classroom; and

(C) professional development, including mentoring, to promote student achievement.

(8) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(9) School readiness certification system--In accordance with the TEC, §29.161, the school readiness certification system is a valid, research-based automated system provided by the State Center for Early Childhood Development through which an early childhood education program submits an application demonstrating the program's record of cognitive, social, and emotional development of young children to be certified as a school ready program.

(10) School readiness integration--In accordance with the TEC, §29.158, school readiness integration refers to cooperative strategies to share resources across public and non-public program delivery organizations in a community or communities that may include, but are not limited to:

(A) sharing certified or highly qualified teachers so that every child in each targeted classroom receives a minimum of three hours of high-quality skill development consistent with developing children's social and emotional well-being;

(B) developing a comprehensive instructional framework, based on the Texas Prekindergarten Guidelines, consisting of common performance goals that encompass the unique characteristics of each individual organization responsible for preparing young children for school success;

(C) sharing physical space if one organization lacks capacity while another has available capacity;

(D) conducting joint professional development programs that focus on proven school readiness components, including the Texas Prekindergarten Guidelines; and

(E) adopting similar approaches to student progress monitoring to inform classroom instruction.

(11) School readiness integration partnership--A collaboration among public prekindergarten programs and local workforce development boards, Head Start providers, college or university early childhood programs, and/or providers of private for-profit or nonprofit licensed child care services that provides a school readiness component to eligible prekindergarten students.

(12) School ready or school readiness--A term that refers to a child being able to function competently in a school environment in the areas of early language and literacy, mathematics, and social skills as objectively measured by state-approved assessment instruments.

(13) Shared services arrangement (SSA)--An agreement between two or more school districts and/or education service centers (ESCs) that provides services for entities involved.

(14) State Center for Early Childhood Development (SCECD)--The state center for early childhood education research and training for early childhood teachers and caregivers administered by The University of Texas Health Science Center at Houston.

(15) Texas Prekindergarten Guidelines--Guidelines approved by the commissioner of education that offer detailed descriptions of expected behaviors across multiple skill domains that should be observed in four- to five-year-old children by the end of their prekindergarten experience. The guidelines are to prepare prekindergarten children to master the skills and concepts in each subject area specified in §74.1 of this title (relating to Essential Knowledge and Skills) in the kindergarten Texas Essential Knowledge and Skills.

(16) Tier 1 grantee--An applicant, with an average student performance over the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023, substantially below the state average for this time period that meets one of the following:

(A) has not previously received Prekindergarten Expansion Grant funding; or

(B) has previously received Prekindergarten Expansion Grant funding but did not participate in Cycle 14 (school year 2008-2009).

(17) Tier 2 grantee--An applicant that participated in Cycle 14 of the Prekindergarten Expansion Grant Program (school year 2008-2009) that is eligible to receive continuation funding due to the applicant's above state average student performance over the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023.

(18) Tier 3 grantee--An applicant that participated in Cycle 14 of the Prekindergarten Expansion Grant Program (school year 2008-2009) that is eligible to receive continuation funding on the basis of the applicant's substantially below state average Grade 3 student performance over the last three consecutive years on the Grade 3 assessment instruments administered under the TEC, §39.023.

(b) Eligibility. Eligible applicants include school districts, open-enrollment charter schools, and ESCs operating as the fiscal agent of an SSA. An applicant may apply for Prekindergarten Early Start Grant Program funds if the applicant:

(1) establishes a school readiness integration partnership; and

(2) demonstrates how the applicant will measure student progress based on proven school readiness components and the school readiness certification system in accordance with TEC, §29.161.

(c) Application and grant award.

(1) An eligible applicant must submit a Prekindergarten Early Start Grant Program application in accordance with the instructions provided by the Texas Education Agency (TEA).

(2) An applicant must document in the grant application its locally adopted procedures for:

(A) determining which eligible students will participate in the program;

(B) implementing a strategic plan encouraging eligible students to attend the program; and

(C) sustaining the level of program quality and services following the term of the grant period.

(3) Each applicant shall provide evidence that before establishing a new prekindergarten program, the school district considered the possibility of sharing use of an existing Head Start or other licensed child care prekindergarten site as a prekindergarten site.

(d) Notification. The TEA will notify each applicant in writing of its selection or non-selection for funding. In the case of an application selected for funding, notification to the grantee will include the contractual conditions which the grantee must accept in accordance with state law.

(e) Funding. Funding allocations may take into account the percentage of educationally disadvantaged students served in the district, in addition to other funding allocation methods as determined by the commissioner annually in the grant application. Contingent upon adequate appropriations, distribution of funds will be according to the following funding structure.

(1) Tier 1 funding. The highest percentage of available funding, as determined annually in the grant application, will be proportionately awarded to Tier 1 grantees. Funding will be provided for a period not to exceed five years from year one of grant application approval and will be based on annual accomplishment of grant objectives and requirements set forth in the application in subsequent years of the five-year cycle.

(2) Tier 2 funding. A percentage of available funding, as determined annually in the grant application, will be awarded to Tier 2 grantees. Funding will be provided for a period not to exceed three years from year one of grant application approval and will be based on annual accomplishment of grant objectives and requirements set forth in the application in subsequent years of the three-year cycle.

(3) Tier 3 funding. A percentage of available funding, as determined annually in the grant application, will be awarded to Tier 3 grantees. Funding will be provided for a period not to exceed two years. Tier 3 grantees will apply annually and shall be required to participate in intensive technical assistance provided by the SCECD focused on proven school readiness components aligned with the Texas Prekindergarten Guidelines.

(f) Allowable expenditures. Allowable expenditures include, but are not limited to, the following:

(1) expenditures related to the continuation of existing full-day prekindergarten programs;

(2) personnel costs related to the teaching personnel needed to expand prekindergarten programs to meet the requirements of at least six hours of instruction by a certified teacher each day;

(3) curriculum materials based on scientific research that are consistent with the Texas Prekindergarten Guidelines and designed to improve the school readiness of preschool children;

(4) equipment, including computers and other technology;

(5) leases for space for prekindergarten programs;

(6) costs associated with developing plans for and entering into integrated school readiness partnerships, including costs associated with infrastructure and administration of the program and partnership;

(7) training activities on proven school readiness components conducted by the SCECD or another provider;

(8) costs associated with the grantee's participation in the school readiness certification system; and

(9) indirect costs.

(g) Unallowable expenditures. Grant funds may not be expended on the following:

(1) portable buildings;

(2) construction of classroom space;

(3) renovation or remodeling of existing space; or

(4) expenditures related to students who are not eligible for the program.

(h) Conditions of operation.

(1) Each grantee must agree to submit all information requested by the TEA through periodic activity/progress reports, a final evaluation report, and other activities related to the evaluation of the program. Reports must be submitted in the prescribed time and must contain all requested information in the prescribed format. These reports will be used by the TEA to evaluate the implementation and progress of grant-funded programs and to determine if modifications or adjustments to the program are necessary.

(2) Each grantee must provide a prekindergarten program designed to develop children's school readiness that is aligned with the Texas Prekindergarten Guidelines.

(3) Each grantee must collaborate in a school readiness integration partnership as established in its grant application. In coordinating school readiness services under this section and in making any related decision to contract with partners such as local workforce development boards, Head Start and Early Head Start providers, licensed child care providers, or other licensed private for-profit or nonprofit child care services providers, a school district shall give preference to entities willing to commit through mutual agreement to implement proven school readiness components that are aligned with the Texas Prekindergarten Guidelines, including participation in:

(A) the school readiness certification system in accordance with the TEC, §29.161;

(B) a nationally recognized accrediting organization approved by the Texas Workforce Commission and the Texas Department of Family and Protective Services; or

(C) the Texas Rising Star Provider certification program administered by the Texas Workforce Commission.

(4) Each grantee must develop and implement, throughout the duration of the grant period, a sustainability plan to continue the quality and level of services of the program after the grant period ends. The sustainability plan must include continuation of the school readiness integration plan and participation in the school readiness certification system.

(i) Subsequent funding. All subsequent funding will be awarded according to the tier funding structure described in subsection (e) of this section. To receive subsequent funding for the Prekindergarten Early Start Grant Program, all grantees must reapply for funding each year of the grant cycle and meet all applicable performance standards included in the prior year's grant agreement. In addition, the following provisions apply.

(1) A Tier 2 grantee applying for funding in years two and three must present valid, research-based empirical data as evidence that the grantee has implemented a prekindergarten program that includes proven school readiness components. After three years of not receiving funds subsequent to the end of the last year of the three-year grant cycle, a Tier 2 grantee will be eligible to reapply for funding as a Tier 1 applicant if the school district's Grade 3 performance on the assessment

instruments administered under the TEC, §39.023, is substantially below the state average, as defined in the grant application.

(2) A Tier 3 grantee will be eligible to reapply for funding as a Tier 2 grantee after the initial two-year cycle if the grantee's Grade 3 student performance level demonstrates improvement, based on valid and reliable measurement by the school readiness certification system, by the end of the grant period.

(j) Exemptions.

(1) The requirement in subsection (h)(3) of this section for a school readiness integration partnership may be exempted if Head Start and/or licensed child care programs required for school readiness integration planning are unavailable in a local community. A school district must provide proof of inability to enter into a school readiness integration partnership by submitting an Exemption Request form in the grant application signed by the superintendent or his/her designee, including a statement signed by the authorized member of the school district's board of trustees certifying inability to submit the required school readiness integration plan based upon unavailability of eligible entities and programs with which to coordinate. An open-enrollment charter school board may also provide a statement certifying inability to enter into a school readiness integration plan based on limitations of the approved charter.

(2) All requests for exemptions from program requirements must be submitted as part of the application.

(3) A grantee that does not administer the Texas Primary Reading Inventory (TPRI) or Tejas LEE by the effective date of this section may request an exemption from the requirement in subsection (b)(2) of this section to participate in the school readiness certification system. The grantee, however, will be required to establish a policy for providing another source of valid and reliable data to demonstrate program effectiveness. Approval of a request for an exemption from the requirement to participate in the school readiness certification system will also apply to the condition of operation specified in subsection (h)(3)(A) of this section.

(k) Technical assistance. The TEA or its contractors will provide technical assistance, contingent on available funding, to implement proven school readiness components to selected school districts and their school readiness integration partners. Based on a comprehensive analysis of student performance, periodic activity/progress reports, final evaluation reports, and other relevant data from grantees, selected grantees and their school readiness integration partners will be required to participate in the technical assistance.

(l) Evaluation. Each grantee operating a prekindergarten program using Prekindergarten Early Start Grant Program funds must comply with evaluation procedures consistent with the TEC, §29.154, in a manner established by the commissioner. Annual submission of evaluation reports based on program quality and student performance will be required in the manner and time set forth in the application for funding.

(m) Revocation.

(1) The commissioner may revoke a grant award for the Prekindergarten Early Start Grant Program based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to participate in data collection and audits;

(D) failure to meet performance standards specified in the application; or

(E) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the Prekindergarten Early Start Grant Program.

(2) A decision by the commissioner to revoke the grant award of a Prekindergarten Early Start Grant Program is final and may not be appealed.

(n) Recovery of funds. The commissioner may audit the use of grant funds and may recover funds against any state provided funds.

(o) Implementation. The funding structure delineated in subsection (e) of this section takes effect beginning with school year 2009-2010.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2009.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER MM. WELLNESS PROGRAMS

28 TAC §§21.4701 - 21.4707

The Commissioner of Insurance adopts new Subchapter MM, §§21.4701 - 21.4707, concerning standards for the establishment of, and requirements applicable to, wellness programs designed to promote disease prevention, wellness and health, and developed pursuant to applicable provisions of the Insurance Code Title 8, Chapters 1201 and 1501. The new sections are adopted without changes to the proposed text as published in the October 3, 2008, issue of the *Texas Register* (33 TexReg 8288).

REASONED JUSTIFICATION. The adopted sections are necessary to implement House Bill (HB) 2252, 80th Legislature, Regular Session, which created the Insurance Code §1201.013 to provide that an insurer issuing an accident and health insurance policy may establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles, or any combination of these incentives, in return for an insured's participation in programs promoting disease prevention, wellness and health. The Insurance Code §1201.006 authorizes the Commissioner to adopt rules as necessary to implement the purposes and provisions of Chapter 1201. HB 2252 also amended the Insurance Code §1501.107, to provide that a small or large employer health benefit plan issuer may establish premium discounts, rebates, or a reduction in otherwise appli-

cable copayments, coinsurance, or deductibles or any combination of such incentives, in return for participation in programs promoting disease prevention, wellness and health. The Insurance Code §1501.010 requires the Commissioner to adopt rules as necessary to implement the Insurance Code Chapter 1501 and to meet the minimum requirements of federal law and regulations which, for small and large employer health carriers, are contained in the Health Insurance Portability and Availability Act (HIPAA). Federal agencies have adopted regulations implementing HIPAA as follows: Department of the Treasury, 26 CFR Part 54 (2006); Department of Labor, 29 CFR Part 2590 (2006); and Department of Health and Human Services, 45 CFR Parts 144 and 146 (2006). Accordingly, portions of the federal regulations are included in these rules as necessary to meet the minimum requirements of federal law. Because the Chapter 1201 and Chapter 1501 provisions authorizing establishment of rewards for participation in wellness programs are substantially identical, the adopted sections are necessary to achieve uniformity and consistency of application to the extent possible among products and programs subject to their provisions.

HOW THE SECTIONS WILL FUNCTION. The adopted sections are designed to facilitate wellness programs, potentially making health coverage more affordable and accessible than it might otherwise be and encouraging covered individuals to participate in programs designed to promote disease prevention, wellness and health. The adopted sections focus on wellness programs to promote educating and empowering covered persons to take charge of their own health, manage chronic conditions and adopt healthier behaviors. The adopted sections make available a means to help employees, group members, and other persons covered under group plans or individual policies to understand the state of their own health. The adopted sections permit development and implementation of initiatives by health plan issuers and group contract holders that are designed to improve or maintain personal health; additionally they permit incentives to help assure strong levels of participation in programs with strategies targeting the adoption of personal health behavior modification(s) supporting healthier lifestyles.

Adopted §21.4701 set out the applicability and scope of the new sections.

Adopted §21.4702 provides definitions for certain terms.

Adopted §21.4703 provides the statement of exception to federal and state statutory prohibitions against discriminating based on health status related factors in group health coverage products. The exception expressly permits incentives to be provided by issuers based on whether an individual has met the standards of a wellness program that satisfies the requirements of the subchapter.

Adopted §21.4704 sets out the purpose of the subchapter.

Adopted §21.4705 sets out baseline criteria that must be met in order for a program to be considered a wellness program that constitutes a permitted exception to the federal and state statutory prohibitions against discrimination based on a health status-related factor.

Adopted §21.4706 sets out provisions for wellness programs that predicate eligibility for rewards under the program solely on the basis of participation in the program.

Adopted §21.4707 sets out provisions for wellness programs that base eligibility for rewards on satisfaction of a health status related standard.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: One commenter requests clarification that the new sections do not apply to or create a policy filing requirement for health plans that provide health-related services and/or information outside the terms of an issuer's health benefit plan. The commenter asks that the clarification recognize the distinction between Section 1, and Sections 2 and 3, of HB 2252. The commenter notes that HB 2252 Section 1 provides that it is a permitted practice for issuers to provide, in addition to benefits under the terms of the contract, health-related services or health related-information, or to disclose the availability of those additional services and information to prospective policy or certificate holders. The commenter also notes that HB 2252 Sections 2 and 3 permit a carrier issuing health benefit coverage to establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles, or any combination of them, in return for participation in programs promoting disease prevention, wellness and health.

Agency Response: The department believes the referenced sections of HB 2252 are clear in terms of their provisions, but agrees that Section 1 of HB 2252 addresses practices that are not to be considered discrimination or inducement under the Insurance Code §541.058, when offered outside the terms of a policy. Amended §541.058 permits issuers to provide, in addition to benefits under the terms of the contract, health-related services or health related-information or to disclose the availability of those additional services and information to prospective policy or certificate holders, without first having to file new policy language with the Department. It provides express definitions for the terms "health-related services" and "health related-information" in §541.058(a). However, the amendments to §541.058 in Section 1 of the bill do not reference or address "wellness programs." Conversely, Sections 2 and 3 of HB 2252 permit a carrier issuing health benefit coverage to establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles, or any combination of them, in return for participation in programs promoting disease prevention, wellness and health. Because changes to premiums, copayments, coinsurance and deductibles are changes to the insurance policy, the proposed and adopted sections of Title 28, Chapter 21, Subchapter MM address wellness programs and rewards offered within insurance policies. Such changes to policy provisions will require a policy filing with the Department. Section 21.4701 of the adopted sections sets out the applicability and scope of the subchapter, providing that it applies to issuers and insurers with respect to policies and plans that establish certain rewards in return for participation in wellness or disease prevention programs. The Department believes that the provisions of Subchapter MM are clear with respect to their scope and applicability.

Comment: One commenter recommends that paragraphs (1), (4), (5) and (6) of §21.4707 be deleted from the rules as adopted. The commenter supported deletion of the four paragraphs on the basis that HB 2252 contains no reference to the standards, limitations or requirements that are set out in the respective paragraphs. Section 21.4707(1) provides that a wellness program that requires satisfaction of a standard associated with a health status related factor may not have a reward that exceeds in total value 20 percent of the cost of the employee-only, or member-only coverage under the plan. Section 21.4707(4) requires that the reward under the program be available to all similarly situated individuals and further sets out criteria pursuant to which that requirement is met. Section 21.4707(5) sets out disclo-

sure requirements for plan materials describing the terms of the wellness program, and §21.4707(6) sets out recommended language that may be used to satisfy the requirement of paragraph (5) of the section.

Agency Response: The Department disagrees that any of paragraphs (1), (4), (5) and (6) of §21.4707 should be deleted from the rules as adopted. As set out in the statement of statutory authority for this subchapter, the Insurance Code §1501.010 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Chapter 1501, relating to the Health Insurance Portability and Availability Act (HIPAA). Federal agencies have adopted regulations that implement HIPAA group health insurance market reforms and that are applicable to Texas issuers of employer plans as follows: Department of the Treasury, 26 CFR Part 54; Department of Labor, 29 CFR Part 2590; and Department of Health and Human Services, 45 CFR Parts 144 and 146. Accordingly, portions of the Federal Regulations are included in these rules as necessary to meet the minimum requirements of federal law. The provisions in paragraphs (1), (4), (5) and (6) of §21.4707 very closely parallel the provisions of federal regulations addressing the same subject matter and setting out the same standards, limitations, and requirements. In addition, as set out in the statement of statutory authority for this subchapter, the Insurance Code §1201.006 authorizes the Commissioner to adopt rules as necessary to implement the purposes and provisions of Chapter 1201. Because the Chapter 1201 and Chapter 1501 provisions authorizing establishment of rewards for participation in wellness programs are substantially identical, the adopted sections are set out to achieve uniformity and consistency of application to the extent possible among products and programs subject to their provisions. For these reasons, the provisions of these paragraphs are essential to these rules and are retained in the adopted sections.

Comment: One commenter raises questions about the proposed subchapter in conjunction with provisions relating to noninsurance benefits, authorization for which resulted from enactment of HB 1847 by the 80th Legislature, and which created the Insurance Code §1701.061. The commenter states that wellness programs contemplated by HB 2252 would be within the scope of HB 1847, which permits an insurer to include in its policy form a noninsurance benefit that is reasonably related to the policy. The commenter also states that inclusion of wellness programs in insurance policies is not mandatory and adds that the proposed sections appear to take the position that a wellness program must be included within the terms of an insurance policy to be legally permissible. The commenter discusses the Insurance Code §541.058(b)(5) and its permissive provisions concerning health-related services or information as well as disclosure of the availability of such services and information. The commenter asserts that language in the proposed sections that appear to the commenter to require inclusion of "wellness services" within the terms of an insurance policy is inconsistent with the language of §541.058(b)(5). The commenter also urges that agents should be entitled to "rely on the wellness program exception," once again focusing on the Insurance Code §541.058(b). The commenter states that the "exception provided in §541.058(b) should also be interpreted to be available to agents." The commenter requests a clarifying provision be added to §21.4705 to indicate that the provisions of the sections apply not only to health benefit plan issuers and accident and health insurers, but also to their agents and representatives.

Agency Response: The Department appreciates the comment and offers the following in response to the questions, concerns, and request. As a preliminary matter, the Department incorporates its response to the first comment requesting clarification and recognition of the distinction between the "health related services" provisions addressed in HB 2252, Section 1, and the "wellness program" provisions in Sections 2 and 3.

The Department also emphasizes that the adopted sections of Subchapter MM implement the provisions of HB 2252 which create the Insurance Code §1201.013 and which amend §1501.107. Both of these statutory provisions apply to carriers that are issuing plans or coverage that establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles. The applicability-and-scope provisions of the adopted sections in §21.4701 are set out to clearly state both the scope of the subject matter of the sections as well as the regulated entities to which the sections apply. Because the rewards established involve premium discounts, rebates, or reductions in otherwise applicable cost sharing financial requirements, they must be addressed within the plan or policy.

Next, with respect to the commenter's statement that wellness programs contemplated by HB 2252 would be within the scope of HB 1847 (which created the Insurance Code §1701.061, permitting an insurer to include in its policy form a noninsurance benefit that is reasonably related to the policy), the Department acknowledges that some wellness programs may involve noninsurance benefits, but does not believe that the noninsurance benefits contemplated in HB 1847 include wellness programs associated with premium discounts or the other rewards contemplated in HB 2252. Section 21.4705(c) acknowledges the possibility of a wellness program that would meet both the §21.4702(2) definition as well as the §21.4705(a) and (b) criteria, and also that would constitute "a good or service provided or disclosed as part of a policy or certificate of insurance that is reasonably related to the type of policy or certificate being issued" as provided in §1701.061. However, since not every wellness program will meet the dual criteria set out in the preceding sentence, the qualifying language "as applicable" is part of §21.4705(c) to indicate the circumstances under which a wellness program would have to comply both with the adopted sections and with §1701.061. The Department also intends to adopt rules to implement HB 1847 pursuant to the Insurance Code §1701.061(f), and initiated the process by posting a draft informal rule for comment in September 2008.

Finally, with respect to the request that §21.4705 be changed to indicate that the sections apply not only to health benefit plan issuers and accident and health insurers but also to their agents and representatives, the Department again emphasizes that the statutory provisions implemented by this adoption are Insurance Code §1201.013 and §1501.107. These Code sections apply to carriers that are issuing plans or coverage that establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles. Agents and their representatives are not authorized to establish premium discounts, rebates, or a reduction in otherwise applicable copayments, coinsurance, or deductibles. For these reasons, the Department makes no change to the sections as adopted.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: None.

Against: None.

Neither for nor against, with changes: Texas Association of Life and Health Insurers; Texas Association of Health Plans; and Thompson, Coe, Cousins & Irons, L.L.P.

STATUTORY AUTHORITY. The new sections are adopted under the Insurance Code §§1201.006, 1501.010, and 36.001. Section 1201.006 authorizes the Commissioner to adopt reasonable rules as necessary to implement the purposes and provisions of Chapter 1201, relating to the regulation of Accident and Health Insurance. Section 1501.010 authorizes the Commissioner of Insurance to adopt rules as necessary to implement Chapter 1501, relating to the Health Insurance Portability and Availability Act (HIPAA). Federal agencies have adopted regulations implementing HIPAA as follows: Department of the Treasury, 26 CFR Part 54 (2006); Department of Labor, 29 CFR Part 2590 (2006); and Department of Health and Human Services, 45 CFR Parts 144 and 146 (2006). Accordingly, portions of the federal regulations are included in these rules as necessary to meet the minimum requirements of federal law. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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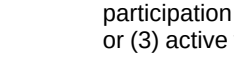

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 130. IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFITS SUBCHAPTER B. SUPPLEMENTAL INCOME BENEFITS

28 TAC §§130.101 - 130.109

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division) adopts amendments to §§130.101 - 130.109, concerning supplemental income benefits (SIBs) with changes to the proposed text as published in the October 3, 2008, issue of the *Texas Register* (33 TexReg 8290).

In accordance with Government Code §2001.033, the preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were in support of or in opposition to adoption of the rule, and the reasons why the Division agrees or disagrees with some of the comments and proposals.

Changes made to the proposed rule are in response to public comments received in writing and at a public hearing held on November 6, 2008, and are described in the summary of comments and responses section of this preamble. Other changes were made for consistency or to correct typographical or grammatical errors.

These amendments implement statutory provisions of House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005, and clarify the process injured employees are required to follow to qualify for SIBs.

One of the changes to the Labor Code by HB 7 was the addition of new §408.1415, which requires the Commissioner to adopt compliance standards for SIBs recipients that require each recipient to demonstrate an active effort to obtain employment. Section 408.1415 also requires the Commissioner to: (1) establish the level of activity that a recipient should have with the Texas Workforce Commission (TWC) and the Department of Assistive and Rehabilitative Services (DARS); (2) define the number of job applications required to be submitted by a recipient to satisfy the work search requirements; and (3) consider factors affecting the availability of employment, including the recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors. HB 7 also amended §408.142 and §408.143 to eliminate the prior "good faith" work search standard and require injured employees seeking SIBs to comply with §408.1415 and the compliance standards for recipients established by the Commissioner.

Section 408.1415(a) requires a supplemental income benefit recipient to demonstrate an active effort to obtain employment by providing evidence satisfactory to the Division of: (1) active participation in a vocational rehabilitation program conducted by DARS or a private vocational rehabilitation provider; (2) active participation in work search efforts conducted through the TWC; or (3) active work search efforts documented by job applications submitted by the recipient.

In evaluating job search efforts by injured employees, the current Division process is consistent with §408.1415(a) in that present rules include the consideration of documented job search efforts, participation in a DARS or other vocational rehabilitative program, and registration with TWC. Although the current rules consider the number of jobs an injured employee applies for during a qualifying period in order to qualify for SIBs, there is no defined number of required weekly applications.

Amendments to the current rules are necessary because §408.1415(b) requires the Commissioner to "establish the level of activity that a recipient should have with the Texas Workforce Commission and the Department of Assistive and Rehabilitative Services" and to "define the number of job applications required to be submitted by a recipient to satisfy the work search requirements." The Commissioner is also required to "consider factors affecting the availability of employment, including the recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors."

The Division consulted with TWC regarding its work search requirements. TWC is part of a local-state network comprised of the statewide efforts of the Commission coupled with planning and service provisions on a regional basis by 28 Local Workforce Development Boards. Each Board sets work search requirements for the counties in its respective region which are

derived in part from an assessment of economic conditions in that region. The work search requirements include a minimum number of weekly work search contacts, which have ranged from one (1) to seven (7), depending on the region. Only "rural" counties, which are defined by the TWC as "counties having a population estimated by the Texas State Data Center at Texas A&M University to be not more than 10,000 as of July 1 of the most recent year for which county population estimates have been published," are permitted to set a work search contact requirement lower than three (3) per week. Likewise, based on specific labor market information and conditions, a Local Workforce Development Board may advise that an unemployment benefits recipient within the area covered by the Board is required to make more than three (3) work search contacts per week. TWC has implemented rules and provides guidelines that describe the types of activities that may constitute a work search contact. See 40 TAC §815.28.

In establishing the level of activity an injured employee should have with TWC and to define the number of job applications required to satisfy the work search requirements, the Commissioner has determined that it is appropriate to require compliance consistent with that of TWC requirements. Therefore, the rule amendments explain that "work search efforts" encompasses both job applications and work search contacts described by TWC rules. Further, the number of job applications required of a SIBs recipient will be consistent with the number of TWC's work search contacts required for an injured employee's county of residence. TWC standards take into account the labor market and economic conditions in the area and whether the county is rural or urban, both of which are specifically mentioned in §408.1415(b)(3) as factors that the Commissioner is to consider in adopting compliance standards.

The Division has established open communication with TWC in order to obtain and maintain up-to-date TWC work search requirements for Texas counties. In addition to being provided with the number of work search contacts required by TWC and contact information for the local workforce Board, injured employees will be able to contact Division field offices and the Office of the Injured Employee Counsel (OIEC) for assistance regarding qualifications and applications for SIBs.

Following publication of the proposed amendments in the *Texas Register* on October 3, 2008, the Division held a public hearing on November 6, 2008. In response to written comments received from interested parties prior to the hearing and comments made at the hearing, the Division has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not introduce new subject matter or affect persons in addition to those subject to the proposal as published. In response to comments received suggesting the use of generally accepted accounting principles language in §130.101(1)(D) was unclear, the subparagraph was amended to remove references to generally accepted accounting principles. In response to comments concerning the effect of changes in the injured employee's work search requirements, the definition of "Qualifying Period" in §130.101(4) was amended to add language clarifying that the requirements for a qualifying period beginning before the effective date of these amended rules continued in effect until the injured employee's next qualifying period that begins on or after the effective date of the adopted rules. In response to comments, §130.101(8) reinstates the current rule language along with the legislative change regarding the name of DARs. In addition, clarification was added that a vocational rehabilitation plan is also known as an Individual Plan for Employment. The Division also received additional comments concerning the clarity of references in §130.102(b), and the Division amended the language of that subsection to clarify that the work search standards are those in Labor Code §408.1415 and this section. Based on comments received, the language in §130.102(d) (now renumbered as §130.102(d)(1)) was amended to read "An injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the following work search requirements each week during the entire qualifying period" to clarify that the injured employee is required make an active effort to meet the work search requirements each week during the entire qualifying period by making use of any one or more of the criteria in §130.102(d)(1)(A) - (E) rather than being restricted to only one of the criteria during a qualifying period. The new provisions should not be interpreted to suggest an injured employee must engage in active efforts eight hours a day, seven days a week in order to qualify for SIBS. In an effort to make a more logical grouping of the qualifying items in §130.102(d)(4) and (5) (now re-lettered as §130.102(d)(1)(D) and (E)) were reversed and re-lettered with no change in their wording. In response to comments, new §130.102(d)(2) was added to confirm that hearing officers would continue to retain discretion in determining if an injured employee had demonstrated reasonable grounds for failure to meet at least one of the work search requirements in this section during any week during the qualifying period. To add in this new subsection (d)(2), the text of §130.102(d) was renumbered as §130.102(d)(1) with §130.102(d)(1) - (5) re-lettered to §130.102(d)(1)(A) - (E). As a result of comments received concerning the clarity and effect of §130.102(e), the subsection (e) was split into two subsections with the addition of a new subsection (f) and a re-lettering of the subsequent subsections. The title for the retained subsection (e) was adopted as "Vocational Rehabilitation" rather than the proposed title "Active Participation and Active Work Search Efforts." The retained subsection (f) added language to clarify that the documentation required of the injured employee was to show active participation in a vocational rehabilitation program during the qualifying period. "Active participation" means the injured employee is making a reasonable effort to fulfill his or her obligations in accordance with the terms of their vocational rehabilitation plan or Individual Plan for Employment. Newly adopted subsection (f) is titled "Work Search Efforts" to reflect the work search efforts language retained from the proposed subsection (e) and moved to new subsection (f). The new subsection (f) includes language regarding the required documentation an injured employee must provide to sufficiently establish active participation in work search efforts and active work search efforts. Language was added to clarify that the active participation in work search efforts was required to be documented "each week during the qualifying period." Active participation in work search efforts and active work search efforts mean that the injured employee is making a reasonable effort to fulfill his or her work search requirements established in the rule. Disputes regarding an injured employee's active participation and reasonable efforts to fulfill their obligations under the rule will be determined by the finder of fact during the dispute resolution process. Evidence from DARS regarding the injured employee's participation level will be considered equally along with all other evidence. As a result of multiple comments received seeking clarification, language was added to subsection (f) to clarify that work search efforts would be consistent with job applications or the work search contacts established by TWC. Also, as the result of additional comments received that asked for clarification of the effect of a change in the number of work search efforts during a qualifying period, language was added to the new subsection (f)

to clarify that if the work search requirements changed during a qualifying period, the injured employee would be responsible for the lesser of the two requirements. Subsections (f), (g), and (h) of §130.102 were re-lettered (g), (h), and (i), respectively, with no change to their text. In response to numerous comments concerning how the injured employee would determine the number of work search efforts would be required in the qualifying period, a new §130.104(b)(5) was inserted adding language requiring the insurance carrier to advise the injured employee of the minimum number of work search efforts required under §130.102(d) and (f) during the next qualifying period.

The adopted amendments change all references in these sections from "commission" to "Division" pursuant to HB 7 merger of the functions of the former Texas Workers' Compensation Commission within the Texas Department of Insurance to form the new Division.

Amendments to §130.101(1) change the definition for "Application for Supplemental Income Benefits" by removing the citation to a specific agency form and instead provide a general statement that the Division application form required for SIBs is pursuant to Labor Code §408.143(b). Section 130.101 is also amended by removing rule language pertaining to an employee's statement regarding "good faith" job searches and adding rule language that requires the employee's statement that "the employee has complied with Labor Code §408.1415 and this subchapter." New language is also added to this section that pertains to the documentation required of self-employed individuals to establish earnings income along with the deletion of specific documentation examples.

An amendment to §130.101(4) changes the definition for "Qualifying period" by adding the provision that the filing period is as provided in Labor Code §408.143(b) and shows that the provisions of the subchapter that applied to a qualifying period beginning prior to the effective date of the rules continues in effect until a new qualifying period begins on or after the effective date of the rules.

Amendments to §130.101(8) change the term to be defined from "Full time vocational rehabilitation program" to "Vocational rehabilitation program" and amends the definition by replacing the reference to the previous Texas Rehabilitation Commission (TRC) with a reference to DARS. The amendments add that a vocational rehabilitation program may also be provided by "a comparable federally funded rehabilitation program in another state under the Rehabilitation Act of 1973, as amended."

Amendments to §130.102(a) change the language from "An injured employee shall not be entitled ..." to "An injured employee is not entitled..." for clarification. Amendments to subsection (b) clarify that the eligibility criteria exclude injured employees who have permanently lost entitlement to supplemental income benefits; and, that the eligibility criteria include completion and filing of an Application for Supplemental Income Benefits in accordance with this subchapter. Subsection (b)(2) is amended to delete language regarding "good faith" efforts to obtain employment and to add the requirement that an injured employee demonstrate an active effort to obtain employment in accordance with Labor Code §408.1415 and this section.

Amendments to §130.102(d) change the subsection title from "Good Faith Effort" to "Work Search Requirements." The adopted amendments delete language regarding "good faith" efforts to obtain employment and add language regarding work search requirements. The text in subsection (d) is renumbered §130.102(d)(1) to allow for the new §130.102(d)(2) which was added to confirm that hearing officers would continue to retain discretion in determining if an injured employee had demonstrated reasonable grounds for failure to meet at least one of the work search requirements in this section during any week during the qualifying period. Subsection (d)(1) is also amended to add "each week" before "during" and "entire" before "qualifying period" to clarify that the injured employee's work search efforts were to continue each week during the entire qualifying period. The subsection as amended states "An injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the following work search requirements each week during the entire qualifying period" and clarifies that the injured employee's active efforts to meet the work search requirements could use a combination of the criteria in §130.102(d)(1)(A) - (E) rather than being restricted to only one. Subsection (d)(1)(B) is amended by adding the word "actively" and deleting the language "enrolled in, and satisfactorily" before "participated in," and deleting "full time" before "vocational rehabilitation program." The amendments also delete "sponsored by the Texas Rehabilitation Commission during the qualifying period" after "vocational rehabilitation program" and instead adds "as defined in §130.101 of this title (relating to Definitions)." Subsection (d)(1)(C) is amended to delete the language "has during the qualifying period been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program provided by a private provider that is included in the Registry of Private Providers of Vocational Rehabilitation Services" and adds the following language "has actively participated in work search efforts conducted through the Texas Workforce Commission (TWC)." Subsection (d)(1)(E) is amended to delete the following language "provided sufficient documentation as described in subsection (f) of this section to show that he or she has made a good faith effort to obtain employment" after the word "has" and instead adds the language "performed active work search efforts documented by job applications."

Amendments to §130.102(e), made in response to comments received, change the subsection title for subsection (e) from the proposed "Active Participation and Active Work Search Efforts" to "Vocational Rehabilitation." The retained subsection (e) adds language to clarify that the documentation required of the injured employee was to show active participation in a vocational rehabilitation program during the qualifying period. The amendments to adopted subsection (e) delete language regarding an injured employee's "good faith" efforts to obtain employment commensurate with the employee's ability to work and a reviewing authority's evaluation of the employee's "good faith" efforts in this regard. A new subsection (f), entitled "Work Search Efforts," reflects the requirements of the subsection that were retained from the original subsection (e). The amendments add language to subsection (f) regarding the required documentation an injured employee must provide to sufficiently establish active participation in work search efforts and active work search efforts. Amendments also add language to subsection (f) to clarify that work search efforts are consistent with job applications or the work search contacts established by TWC and that if the work search requirements changed during a qualifying period, the injured employee would be responsible for the lesser of the two requirements.

Amendments to §130.103(a) include the addition of the word "insurance" before the term "carrier" and the addition of "electronic transmission" as a method of notifying the injured em-

ployee and the insurance carrier of the Division's determination of entitlement to SIBs for the first quarter. The term "electronic transmission" encompasses facsimile transmission, e-mail, and other electronic modes of electronic transmission that may not be currently feasible or available but may be so in the future. Use of the general term will allow for broader methods of electronic delivery as they become available, provided the injured employee and the insurance carrier have the means for receipt of the notification in the particular mode or format. An additional amendment to §130.103 is the deletion of subsection (d) regarding the referral to the TRC. This language is deleted because the TRC is no longer in existence and the injured employee's requirement to actively participate in a vocational rehabilitation program conducted by the DARS or a private vocational rehabilitation provider is contained in the statute.

Amendments to §130.104 include the addition of the word "insurance" before the term "carrier." An additional amendment in subsection (c) is the deletion of the term "facsimile" and the addition of the term "electronic transmission." The term "electronic transmission" encompasses facsimile transmission, e-mail, and other electronic modes of electronic transmission that may not be currently feasible or available but may be so in the future. Use of the general term broadens the methods of delivery the injured employee may use for submitting an application for SIBs to the insurance carrier, provided the insurance carrier has the means for receipt of the application in the particular mode or format. Amendments to subsection (e) expand the methods of delivery from "mailing" of the notice of determination to the injured employee from the insurance carrier to require the notice be sent by first class mail, personal delivery, or electronic transmission. Also, the language "form DWC-52" is deleted to allow a broader citation to the Division's form by using only the form's title. This is also consistent with the amendment to the definition of Application for Supplemental Income Benefits at §130.101. Language is also amended to clarify that the insurance carrier must include the "reason" for its determination in the carrier's notice to the injured employee and a new example of language that does not satisfy this requirement is added. Amendments also include the deletion of language referring to "good faith effort" as this term is obsolete as a result of Labor Code §408.1415.

Amendments to §130.105 include the addition of the word "insurance" before the term "carrier."

Amendments to §130.106 include an amendment to reflect a change in the rule title and the addition of new subsection (c). The rule title deletes the word "permanent" to allow this rule to address the loss of an individual quarter of SIBs in addition to a permanent loss of SIBs. Subsection (c), regarding refusal of vocational rehabilitation services, is added to clarify that an injured employee in a vocational rehabilitation program who refuses vocational services or refuses to cooperate with services provided at any time during a qualifying period is not entitled to SIBs for the related quarter. This provision is consistent with Labor Code §408.1415.

Amendments to §130.107 and §130.108 include the addition of the word "insurance" before the term "carrier."

Additional amendments to §130.108 include the deletion of subsection (a), regarding general dispute information, and the subsequent renumbering of the subsections. Adopted subsection (a) language concerning insurance carrier and injured employee conduct was determined to be no longer appropriate for placement in this section. Insurance carrier and injured employee conduct is more succinctly covered at Labor Code, Chapter 415, "Administrative Violations." Subsection (a) is amended to allow the injured employee to contest the SIBs determination of the insurance carrier, as well as that of the Division. The citation to a specific rule is amended in favor of a broader citation to the applicable rule chapter. The reference to the rule title is also amended to reflect a reference to the rule chapter title. The citations to specific rules in subsections (b) and (c) are also amended in favor of a broader citation to the applicable rule chapter with corresponding amendments to reference the rule chapter title rather than the rule title. The reference in subsection (d) to re-lettered subsection (a) is also amended to reflect the change in subsection (a).

Amendments to §130.109 include the deletion of a specific rule reference. The citation to a specific rule is amended in favor of a broader citation to the applicable rule chapter. The reference to the rule title is also amended to reflect the reference to the rule chapter title.

GENERAL COMMENTS

Comment: Commenters state that they generally supported the adoption of the rule amendments.

Agency Response: The Division appreciates the supportive comments.

Comment: Commenter states that the rules should enhance and promote the return to work objectives put in place by the Legislature with the enactment of HB 7.

Agency Response: The Division appreciates the supportive comments and agrees that the rules will enhance and promote the return to work objectives.

Comment: Commenter states that stakeholders had been provided with adequate opportunity to comment but recommends that the Division confer further with vocational rehabilitation counselors prior to finalizing it.

Agency Response: The Division appreciates the comment but disagrees that further consultation with vocational rehabilitation counselors is needed prior to finalizing the rule. As the commenter noted, stakeholders have been provided with an adequate opportunity to comment on the proposed rules.

Comment: Commenter states that any amendments to the existing rules are Legislatively required to be geared towards actually returning an injured employee to employment as opposed to simply qualifying them for additional benefits while the claimant is not actually doing anything meaningful towards the goal of employment and that the rules, as proposed, fail to reach that legislative goal and are not adequate to ensure compliance with the statute.

Agency Response: The Division disagrees that the rules fail to move an injured employee toward a return to work. The rules provide specific requirements that the injured employee must meet in order to both qualify for and continue to receive SIBs. All of those requirements are geared to ultimately returning the injured employee to work in a timely manner.

Comment: Commenter suggests that the rule amendments should include a good faith effort by employees to return to work.

Agency Response: The Division disagrees. Good faith efforts were specifically removed by the Legislature in HB 7 and are no longer the statutory standard in determining whether a productive work search effort has been undertaken.

Comment: Commenter suggests that the rule amendments will require an injured employee to contact four different agencies to obtain benefits.

Agency Response: The Division disagrees. The adopted amendments have added only one additional contact (TWC) to the previous requirements. The method the injured employee selects to fulfill their qualifying requirements will determine the agency or agencies involved. The Division anticipates that its staff and OIEC staff will be available to assist injured employees in navigating the changes. The Division will also add information to its website and publish informational material following or in conjunction with the rule adoption to assist the injured employees.

§130.101

Comment: Commenter recommends adding definitions for the phrases "work search contacts" and "work search efforts."

Agency Response: The Division disagrees that the rule should add definitions for the phrases "work search contacts" and "work search efforts." However, the Division clarifies that, as set forth in newly adopted §130.102(f), "work search efforts" encompasses both job applications and work search contacts described by TWC rules. In establishing what may be considered a work search effort, the Commissioner has determined it is appropriate to require compliance consistent with that of TWC requirements regarding work search contacts. TWC has implemented rules and provides guidance that describes the type of activities that may constitute a work search contact. TWC's rule at 40 TAC §815.28 provides examples of work search contacts and the Division does not feel that it is necessary to merely restate those examples.

§130.101(1)(B)

Comment: Commenter suggests amending the term "wages" in §130.101(1)(B) to reflect gross wages and to specify that the term includes employer provided fringe benefits in order to provide a reasonable comparison of pre-injury and post-injury average weekly wage.

Agency Response: The Division disagrees. The term "wages" is defined in §130.101(9) and Labor Code §401.011(43).

§130.101(1)(C)

Comment: Commenters state that the term "supporting documentation" alone is vague and requires explicit directions as to what supporting documentation should accompany the SIBs application.

Agency Response: The Division disagrees. Supporting documentation should include any information that is pertinent to the job search and this information will vary on a case-to-case basis depending on the method the injured employee selects to fulfill their qualifying requirements. Furthermore, the Division currently collects data relevant to the determination of compliance through the use of the Application for Supplemental Income Benefits.

§130.101(1)(D)

Comment: Commenters suggest adding clarifying language, including the use of examples, to the generally accepted accounting principles ("GAAP") requirement and to clarify where the cash or accrual method of accounting is to be used.

Agency Response: The Division disagrees that clarifying language in the form of examples is necessary but does agree based on comments that the added reference to GAAP was confusing to stakeholders unfamiliar with the term. The Division has removed the proposed language referring to GAAP.

§130.101(8)

Comment: Commenters suggest that vocational rehabilitation specialists providing vocational rehabilitation services to an injured employee must be listed on the Registry of Vocational Providers and have the appropriate credentials, even if that employee is working for DARS.

Agency Response: The Division disagrees that a change in this subsection is appropriate. The issue of registration of vocational rehabilitation specialists is addressed in §136.2 of this title (relating to Registry of Private Providers of Vocational Rehabilitation Services), which is not included in these Chapter 130 amendments.

Comment: Commenters suggest that the definition for a "vocational rehabilitation program" is incorrect and propose revisions. Commenter recommends the nationally recognized definition of "vocational rehabilitation" established by the Commission on Certification of Rehabilitation Counselors be used.

Agency Response: The Division agrees the definition of "vocational rehabilitation program" as proposed required revision. The adopted version reinstates the original definition of "vocational rehabilitation program" but includes the Legislative changes and recognizes federally funded vocational rehabilitation programs of other states. The subsection also adds clarification that a vocational rehabilitation plan developed for an injured employee by a private provider of vocational rehabilitation services is the same as an Individual Plan for Employment (IPE) developed by the Department of Assistive and Rehabilitation Services. The Division disagrees to redefine vocational rehabilitation as established by the Commission on Certification of Rehabilitation Counselors because the Legislative changes to §408.1415 do not necessitate or direct such changes.

Comment: Commenter suggests that the Division require more proof of active participation by the injured employee from the DARS representative.

Agency Response: The Division disagrees. The injured employee is responsible for providing documentation that he or she has actively participated in the requirements of the vocational rehabilitation program during the qualifying period. Active participation means the injured employee is making a reasonable effort to fulfill his or her obligations in accordance with the terms of their vocational rehabilitation plan or Individual Plan for Employment.

Comment: Commenter states that the deletion of the words "full time" from the definition of vocational rehabilitation program will enable injured employees to game the system and linger in a non-work status. The rule should indicate that the vocational rehabilitation program must be equivalent to working a full day and full work week during the duration of the vocational rehabilitation program.

Agency Response: The Division disagrees that retaining the "full time" term in the rule is necessary. The Act does not require the participation to be full-time. The previous inclusion of the term has resulted in disputes that detracted from the goal of prompt return to work. Further, the amount of time required by a program is more appropriately established by the vocational rehabilitation provider.

Comment: Commenter suggests that the Division retain the "full time" requirement for injured employee's participation in vocational rehabilitation programs because removing the current full time attendance requirement seems contrary to the legislative intent of enacting HB 7 to foster prompt and appropriate return to work.

Agency Response: The Division disagrees that removing the term" full time" is contrary to the legislative intent of HB 7 to foster prompt and appropriate return to work. The Act does not require the participation to be full-time and the previous inclusion of the term has resulted in disputes that detract from the goal of prompt return to work.

Comment: Commenters suggest that the rule allows DARS to determine what is an acceptable level of activity without Division review.

Agency Response: The Division disagrees that the rule allows DARS to determine what is an acceptable level of activity without Division review. While the activity level is set by the program, the injured employee must still provide documentation to establish that he or she has actively participated in a vocational rehabilitation program under §130.102(e).

Comment: Commenter states that it supports the deletion of the term "full time" to describe the vocational rehabilitation program and that the change should reduce disputes.

Agency Response: The Division appreciated the supportive comment.

§130.102

Comment: Commenter suggests adding the statutory language of Labor Code §408.1415 to the SIB's application as a reminder to the injured employee of the requirements to be met in order to qualify for benefits.

Agency Response: The Division appreciates the comment and will take it under consideration at the time the application form is revised.

Comment: Commenter suggests that a good cause exception for failure to comply with the work search requirements be included in the rules.

Agency Response: The Division disagrees that a good cause exception is necessary because active participation means the injured employee is making a reasonable effort to fulfill their work search requirements established in the rule. The addition of §130.102(d)(2) clarifies that hearing officers will continue to have discretion to determine if injured employees have made reasonable efforts to meet work search requirements each week during a qualifying period.

Comment: Commenter suggests that the proposed rule incorrectly uses the term "provide" when the statute uses the term "conduct."

Agency Response: The Division disagrees. The rules do not attempt to reflect a change from the Act which appears to use the terms interchangeably, as in §408.150(b), for example. Further, the Division believes that the reference to "provide" in this instance attempts to refer to the actions taken under the services conducted by DARS and vocational rehabilitation service providers and does not deviate from the Act.

Comment: Commenters suggest that lost entitlement to SIBs based on a refusal of vocational services should be permanent and not limited to one quarter and that the word "permanently" be deleted from §130.102(b).

Agency Response: The Division disagrees that striking the word "permanently" from §130.102(b) is appropriate, as this section deals with eligibility to file an application for SIBs benefits and does not preclude the claimant from filing for subsequent quarters in the event he or she had previously declined or failed to cooperate with vocational services that were offered. A permanent loss of entitlement would be inconsistent with the Legislative goal of returning the injured employee to productive work.

§130.102(b)

Comment: Commenter suggests that the §130.102 language differs from the statutory language of §408.142(b).

Agency Response: The Division agrees. Therefore, as adopted, language has been added to §130.102(b) to clarify that an application for SIBs must be filed in order to be considered for SIBs. The proposed rule language was unclear and the adopted rule language is reworded for clarity.

§130.102(b)(2)

Comment: Commenters suggest adding language: to clarify that injured employees should only apply for jobs that are commensurate with their ability and qualifications, to clarify whether a job contact by an injured employee for a job that the injured employee is not capable of performing would be considered a valid job contact, and to clarify whether a valid job contact would require that the employer actually have a job opening.

Agency Response: The Division disagrees. In establishing what may be considered a work search effort, the Commissioner has determined it is appropriate to require compliance consistent with that of TWC requirements regarding work search contacts. TWC has implemented rules and provides guidance that describes the type of activities that may constitute a work search contact.

§130.102(c)

Comment: Commenters suggest changes to §130.102(c) to clarify what constitutes wages during the qualifying period for SIBs.

Agency Response: The Division disagrees. The Division has reviewed the amendments to §408.142 made by the Legislature in HB 7 and believes that there were no changes in it would indicate Legislative guidance showing that a change to the rule was required or suggested.

§130.102(d)

Comment: Commenter suggests that the rules include a provision that injured employees should be required to travel up to 75 miles when searching for work.

Agency Response: The Division disagrees. The Division has relied upon TWC in considering factors affecting the availability of employment as required under §408.1415(b)(3).

Comment: Commenter suggests that the proposed rules include a requirement that students who are not working must be enrolled full-time rather than in a part-time or limited situation in order to be eligible for SIBs.

Agency Response: The Division disagrees. The terms or obligations under an individual's vocational rehabilitation plan or Individual Plan for Employment will be established through the vocational rehabilitation program.

Comment: Commenters ask how often the number of required job contacts is reviewed or altered and whether an injured employee will have to change the number of contacts following a TWC change.

Agency Response: TWC has indicated that the number of job searches required by Local Workforce Development Boards is reviewed each January. The Boards then meet quarterly. TWC has indicated that changes after the January meeting are infrequent. To clarify the consequences of what occurs If the required number of contacts changes during a qualifying period, the Division has added additional language to §130.102(e) (now contained in new §130.102(f)) to show that the injured employee will be required to make job contacts based on the lesser of the number required on the first day of the qualifying period or the newly established number. Similarly, if the number of work search contacts provided on the application for SIBs differs from the actual number of work search contacts required on the first day of the qualifying period, the lesser number of work search contacts will apply. Further, to clarify the injured employee's work search requirements during the transition period when the rules become effective, language has been added to §130.101(4) showing that the rules in effect for a qualifying period beginning before the effective date of the rules continues in effect until the injured employee's next qualifying period that begins on or after the effective date of the rules.

§130.102(d)(1) (now §130.102(d)(1)(A))

Comment: Commenter suggests changes to §130.102(d)(1) (adopted as §130.102(d)(1)(A)), to clarify the injured employee's ability to work by requiring a functional capacity examination confirmed by a certifying doctor.

Agency Response: The Division disagrees. Rules currently provide a method to determine an injured employee's ability to work through the designated doctor examination process.

§130.102(d)(2) (now §130.102(d)(1)(B))

Comment: Commenters suggest that rule be amended to require an employee to meet the requirements "throughout the qualifying period" rather than "during the qualifying period."

Agency Response: The Division disagrees. The amendment was not intended to change the interpretation of how eligibility criteria are reviewed for entitlement purposes. The language "during the qualifying period" was moved from proposed subsection (d)(2) to adopted subsection (d)(1) only to clarify that it applies to all eligibility criteria and not only to a vocational rehabilitation program under §130.102(d)(2) (now §130.102(d)(1)(B)). Additionally, the word "entire" was inserted before "qualifying period" and "each week" was inserted before "during" to clarify that active efforts were expected of the injured employee each week during the entire qualifying period. The language was also clarified to show that the five criteria under §130.102(d)(1) could be used alone or in combination to satisfy the work search requirements during the qualifying period.

Comment: Commenter states that it supports the proposed changes deleting the terms "Full time" and "sponsored" in regards to the vocational rehabilitation program and replacing "satisfactorily participated" with "actively participated" in a vocational rehabilitation program.

Agency Response: The Division appreciates the supportive comment.

Comment: Commenter suggests that some provision allowing insurance carriers access to the injured employee's file with both DARS and TWC be included in the rule to assist in assessing compliance.

Agency Response: The Division understands the commenter's concerns, however, the Division has no statutory authority to require DARS and TWC to provide injured employee's files to insurance carriers. Section 130.102(e) and new §130.102(f) of the rules require the employee to provide documentation that establishes that the employee has actively participated in the vocational rehabilitation program or the work search efforts conducted through TWC.

Comment: Commenter requests that at an Individual Plan of Employment (IPE) be required by the injured employee in order to receive SIBs.

Agency Response: The Division agrees that an IPE should be required for injured employees enrolled in a vocational rehabilitation program and the rule has been revised to reflect that requirement.

Comment: Commenter suggests that a private vocational rehabilitation professional be the gatekeeper due to the difficulty in obtaining information from DARS.

Agency Response: The Division disagrees. The statute requires participation in a vocational rehabilitation program conducted by DARS or by a private vocational rehabilitation provider.

Comment: Commenter expresses concern that active participation in a vocational rehabilitation program fails to establish a level of activity with DARS and that the rule limits the authority of a hearing officer to review factual issues.

Agency Response: The Division disagrees. The Commissioner is charged with establishing the level of activity that is required of an injured employee with DARS. As stated previously, active participation means the injured employee is making a reasonable effort to fulfill his or her obligations in accordance with the terms of his or her vocational rehabilitation plan or Individual Plan for Employment. The adopted rule is not intended to limit a hearing officer's role in reviewing the facts of a case. Evidence from DARS regarding the injured employee's participation level will be considered equally along with all other evidence.

Comment: Commenters suggest that the proposed rules related to work search contacts do not address appropriate statutory requirements of job applications.

Agency Response: The Division disagrees. As stated earlier in this preamble, the adopted amendments provide that compliance with the required job applications is consistent with the number of TWC's work search contacts.

Comment: Commenter suggests that applying TWC standards for qualifying for unemployment benefits as qualifiers for SIBs is inadequate since SIBs has the potential to last for five years, whereas unemployment compensation benefits are geared towards a period of six months or less.

Agency Response: The Division disagrees. The Division is charged to establish the level of activity a recipient should have with TWC and to define the number of job applications required to be submitted to satisfy work search requirements. The Division has relied upon the TWC in considering factors affecting the availability of employment as required under §408.1415(b)(3).

Comment: Commenter suggests that the rule requires out of state injured employees to subscribe to a separate standard in qualifying for benefits under unemployment compensation rules.

Agency Response: The Division agrees that employees who are out of state would have to meet local work search requirements in order to qualify for SIBs. Out of state employee are not able to comply with local workforce development boards in Texas, which is why the rule provides a comparable method for an out of state employee. Accordingly, the public employment service in the employee's state of residence is the proper agency to set the number of searches required.

§130.102(d)(3) (now §130.102(d)(1)(C))

Comment: Commenter requests clarification of whether the phrase "work search efforts" as it is used in proposed §130.102(d)(3) (adopted as §130.102(d)(1)(C)) is limited to job applications or whether it is synonymous with the phrase "work search contacts" as it is defined in 40 TAC §815.28, which encompasses other activities of a productive search for employment other than completing job applications.

Agency Response: The Division clarifies that, as set forth in newly adopted §130.102(f), "work search efforts" encompasses both job applications and work search contacts as described by TWC rules.

§130.102(d)(4) (now §130.102(d)(1)(E))

Comment: Commenters suggest that §130.102(d)(4) (adopted as §130.102(d)(1)(E)) concerning the inability to work as a qualification for SIBs conflicts with the statute and should be removed.

Agency Response: The Division disagrees. Under the provisions of Labor Code §408.1415(b), the Commissioner is charged with establishing the level of activity that is required of an injured employee with TWC and DARS and to define the number of job applications required to be submitted to satisfy the work search requirements. The injured employee is required to make reasonable work search efforts. However, the Division recognizes there will be rare cases where an injured employee may be legitimately unable to work in any capacity during the qualifying period.

§130.102(d)(5) (now §130.102(d)(1)(D))

Comment: Commenters suggest expanding the subsection by amending it to show that the active work search applications must be submitted to an employer that has a position currently open, will have one open in the near future, or is hiring during the qualifying period.

Agency Response: The Division disagrees. In establishing what may be considered a job application, the Commissioner has determined it is appropriate to require compliance consistent with that of TWC requirements regarding work search contacts. TWC has implemented rules and provides guidance that describes the type of activities that may constitute a work search contact.

Comment: Commenter requests clarification of the phrase "has performed active work search efforts documented by job applications" that requires an injured employee, who engages in a job search outside of TWC in an effort to establish SIBs entitlement, to document those work search efforts by submitting completed job applications and that other job search activities will not be sufficient to establish SIBs entitlement.

Agency Response: This Division clarifies that, as set forth in adopted §130.102(f), "work search efforts" encompasses both job applications and work search contacts as described by the TWC rules.

Comment: Commenters support the elimination of the subjective concept of "Good Faith Effort" to find employment. Defining work search efforts more objectively by using TWC's unemployment compensation criteria for the required number of work search contacts should be helpful as long as the information is easily accessible to the injured employee.

Agency Response: The Division appreciates the supportive comment. The Division expects to provide injured employees with access to appropriate information including 800 telephone numbers and web links. Additionally, §130.104(b) has been amended to require the insurance carrier to advise the injured employee of the number of work search contacts required when it sends out the Application for SIBs Benefits form prior to the beginning of a qualifying period.

§130.102(e) (now re-lettered as §130.102(f))

Comment: Commenter suggests a revision to the proposed rule amendments that sets a specific number of job searches to assist injured employees in knowing how many job searches are required. Other commenters questioned the number of job applications required.

Agency Response: The Division disagrees. The Division uses the TWC required number of work search contacts to allow it to meet the Legislative requirement at Labor Code §408.1415(b)(3). The TWC establishes these requirements taking into consideration factors affecting availability of employment, including recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors. Therefore, the Division does not find it is in the state's best interest to duplicate these efforts to develop identical information. The Division expects to provide injured employees with access to appropriate information including toll free telephone numbers and web links. Additionally, adopted §130.104(b) requires the insurance carrier to advise the injured employee of the number of work search contacts required when it sends out the Application for SIBs Benefits form prior to the beginning of a qualifying period. Further, to clarify the injured employee's work search requirements during the transition period when the rules become effective, language has been added to §130.101(4) showing that the rules in effect for a qualifying period beginning before the effective date of the rules continues in effect until the injured employee's next qualifying period that begins on or after the effective date of the rules.

Comment: Commenters suggest that the proposed rule amendments establish that the TWC work search contact numbers include a union hiring hall referral or allow a union hiring hall referral to take the place of applications. One commenter states that union hiring halls are not provided for in the Labor Code.

Agency Response: The Division clarifies that the Texas Workers' Compensation Act does not include an exception for union employees. A properly documented hiring hall referral may be used as a work search contact in place of filing an application. The employee log should reflect this type of situation.

Comment: Commenter states that TWC is ill equipped to deal with some of the secondary gains issues present in many workers compensation/SIBS recipients that prevent them from being employed. Training would be needed for this agency to learn to deal with the caveats of the workers compensation claimant.

Agency Response: The Division does not comment on TWC matters. The Division does expect, however, to provide support to TWC through consultation on workers' compensation matters as necessary.

Comment: Commenter stated that additional training for hearing officers in the Benefit Review Conferences (BRCs) and Contested Case Hearings (CCHs) will be needed as well so that they can make appropriate decisions in their rulings that adhere to the intent of these changes in the SIBS rules.

Agency Response: The Division agrees and anticipates providing appropriate training to staff on the amended SIBs rules.

Comment: Commenters oppose inclusion of "substantially met" language and suggests revision of §130.102(f).

Agency Response: The Division agrees. The rule language has been revised to remove "met or substantially met" and has added the statutorily consistent language of "actively participated in."

Comment: Commenters suggest that rule be amended to require an employee to meet the requirements "throughout" the qualifying period rather than "during" the qualifying period.

Agency Response: The Division disagrees. There was no statutory provision to indicate an intended change in the interpretation of how eligibility criteria are reviewed for entitlement purposes. The Division clarifies the language "during the entire qualifying period" was only moved from previous subsection (d)(2) to adopted subsection (d)(1) to clarify that the language applies to all eligibility criteria and not only to a vocational rehabilitation program under previous subsection (d)(2).

Comment: Commenter suggests that the proposed rule amendments are unconstitutional because requiring substantial compliance with an IPE to be entitled to SIBs is beyond the active participation required by the statute. Commenter suggests that enrollment into a vocational rehabilitation program is sufficient to meet the statutory requirement.

Agency Response: The Division agrees in part. As adopted, subsections (e) and (f) do not include the language "substantially met." However, the Division disagrees that enrollment into a vocational rehabilitation program is sufficient to meet the statutory requirement. Injured employees are required to establish that they have made reasonable efforts to fulfill their obligations in accordance with the terms of their vocational rehabilitation plan or their Individual Plan for Employment.

Comment: Commenters suggest that the inclusion of "or substantially met" in §130.102(e) (now new §130.102(f)), as it relates to meeting the work search requirements, weakens the proposed rule.

Agency Response: The Division disagrees that the rule language as proposed weakens the rule; however, the adopted rule language does not include the language "substantially met." This phrase was deleted in response to another comment.

§130.102(f) (now re-lettered as §130.102(g))

Comment: Commenters suggest adding language to clarify that injured employees should only apply for jobs that are commensurate with their ability and qualifications, to clarify whether a job contact by an injured employee for a job that the injured employee is not capable of performing would be considered a valid job contact, and to clarify whether a valid job contact would require that the employer actually have a job opening.

Agency Response: The Division disagrees. In establishing what may be considered a work search contact, the Commissioner has determined it is appropriate to require compliance consistent with that of TWC requirements regarding work search contacts. TWC has implemented rules and provides guidance that describes the type of activities that may constitute a work search contact.

§130.102(g) (now re-lettered as §130.102(h))

Comment: Commenters suggest revision of §130.102(f) (now re-lettered as §130.102(h)) regarding the impairment rating finality provision.

Agency Response: The Division disagrees. The Division has reviewed the legislative changes to §408.1415 and did not find any amendments by HB 7 that would necessitate or direct changes to §130.102(f) (now re-lettered as §130.102(g)). As such, the Division believes that the requested revision is beyond the scope of the legislative changes.

§130.102(h) (now re-lettered as §130.102(i))

Comment: Commenter suggests a revision to the rule regarding reasonable travel expenses.

Agency Response: The Division disagrees. The Division has reviewed the legislative changes to §408.1415 and did not find any amendments by HB 7 that would necessitate or direct changes to §130.102(h) (now re-lettered as §130.102(i)). As such, the Division believes that the requested revision is beyond the scope of the legislative changes.

§130.103(b) and (c)

Comment: Commenters suggest adding a requirement that the Division provide the insurance carrier with a complete copy of the SIBs application after a determination of entitlement.

Agency Response: The Division disagrees. The Division has reviewed the legislative changes to §408.1415 and did not find any amendments by HB 7 that would necessitate or direct changes to §130.103(b). As such, the Division believes that the requested revision is beyond the scope of the legislative changes.

§130.103(b)(5)

Comment: Commenter agrees with statutory changes but expresses concern about injured employees being able to access appropriate information.

Agency Response: The Division appreciates the supportive comment. The Division expects to provide injured employees with access to appropriate information including toll free telephone numbers and web links. Additionally, §130.104(b) has been amended to require the insurance carrier to advise the injured employee of the number of work search contacts required when it sends out the Application for SIBs Benefits form prior to the beginning of a qualifying period.

§130.103(d)

Comment: Commenter suggests that the Division continue sending out the Referral to DARS letters at the same time they send out the Determination of Entitlement or Non-Entitlement to SIBS letters.

Agency Response: The Division disagrees. The Division continues to comply with the statutory obligation to provide employees with notice of DARS services and the Division notification process has not changed. Section 130.103(d) has been deleted because the notice required came after a determination of eligi-

bility. The Division believes that its procedures sufficiently provide employees with appropriate notification of the SIBs criteria requirements.

§130.104(a)

Comment: Commenter suggests stronger enforcement in regards to incomplete applications and that the carrier 10 day deadline start over whenever an employee submits additional SIBs application documentation. The commenter says that attorney fees should not be awarded or should be greatly reduced if an attorney intentionally provides an incomplete application to the carrier.

Agency Response: The Division disagrees. Allowing the 10 day deadline to start over would be detrimental to the prompt payment of benefits or the initiation of dispute resolution process. The comment related to attorney fees is beyond the scope of the statutory amendments addressed in HB 7 and inappropriate to consider in these rule amendments.

§130.104(b)

Comment: Commenter suggests that §130.104(b) be amended to require the insurance carrier, when sending the SIBs application to the injured employee, to identify the work search requirements applicable, in addition to the information currently required to address concern about injured employees being able to access appropriate information.

Agency Response: The Division agrees. Section 130.104(b) has been amended to require that the insurance carrier advise the injured employee of the number of work search contacts required when it sends out the Application for Supplemental Income Benefits prior to the beginning of a qualifying period. The Division also expects to provide injured employees with access to appropriate information including toll free telephone numbers and web links.

§130.105(a)(1)

Comment: Commenter inquiries whether the rule amendments affect the §130.105(a)(1) requirement directing insurance carrier's to timely mail applications for SIBs to injured employees.

Agency Response: The Division disagrees. There were no changes or amendments in this rule subsection from the previous version.

§130.106(c)

Comment: Commenters suggest that DARS and private vocational rehabilitation providers be required to notify the Division and the insurance carrier of the refusal of an injured employee to participate in vocational rehabilitation services. Commenters also suggest a memorandum of understanding between the Division and DARS be developed for this purpose.

Agency Response: The Division disagrees that a rule is necessary to require private providers to provide carriers with copies of their reports, including whether an employee has refused to participate in vocational rehabilitation services. As noted in the 1999 rule preamble for §130.102, "An insurance carrier should have access to progress reports indicating the level of cooperation with the program." The suggested memorandum of understanding is beyond the scope of these rule amendments.

Comment: Commenter supports this amendment that would disqualify an injured employee for refusal of offered vocational services.

Agency Response: The Division appreciates the supportive comment.

§130.108(c) and (d)

Comment: Commenters suggest revisions to the rule that clarify insurance carrier requirements regarding when to request dispute resolution regarding supplemental income benefits and who is required to request dispute resolution. Commenter states an insurance carrier waives its right to dispute entitlement to SIBs if the insurance carrier does not request the dispute resolution. Commenter stated that the current SIBs rules require carriers to file a DWC-45 when denying SIBs for subsequent quarters. Commenter questions why the carrier is required to request a BRC, when the carrier is denying SIBs. Since the claimant is the party requesting the SIBs, the claimant should be the party required to submit the DWC-45. Commenter stated that this is an additional, unnecessary burden placed on carriers and that the party seeking the benefits should be the party required to request a BRC.

Agency Response: The Division disagrees. The Division has reviewed the legislative changes to §408.147 and did not find any amendments by HB 7 that would necessitate or direct changes to §130.108. As such, the Division believes that the requested revision is beyond the scope of the legislative changes.

§130.108(e)(2)

Comment: Commenter recommends the Division revise the rule to clarify the award of attorney fees.

Agency Response: The Division disagrees with the need for additional clarification. Attorney fees are beyond the scope of the legislative changes under §408.1415. The Division has reviewed HB 7 and believes that the bill did not make any amendments to either §408.147 or §408.221 that would require additional changes to §130.108(e)(2).

For, with changes: Bituminous Insurance Companies; Argo Group US; City of Houston; TASB Risk Management Fund; Service Lloyds Insurance Company; Relyon, LLC; ESIS; Review Med, L.P.; Office of Injured Employee Counsel; Innovative Risk Management; Insurance Council of Texas; American Insurance Association; State Office of Risk Management; Employers Edge Administrative Services, Inc.; Department of Assistive and Rehabilitative Services; Texas Mutual Insurance Company; Texas Association of Business; Texas AFL-CIO; Law Offices of Ricky Green; two individuals.

Against: J. A. Davis & Associates, LLP; Flahive, Ogden & Latson

The amendments are adopted pursuant to Labor Code §§402.00111, 402.061, 408.141, 408.1415, 408.142, 408.143, 408.150, and 408.151. Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code, Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.141, Award of Supplemental Income Benefits, provides that an award of SIBs must be made in accordance with Subchapter H, Supplemental Income Benefits. Labor Code §408.1415, Work Search Compliance Standards, provides that the Commissioner shall adopt by rule compliance standards for SIBs recipients that require each recipient to demonstrate an active effort to obtain employment. Labor Code §408.142, Supplemental Income Benefits, provides that an employee is entitled to SIBs if on the expiration of the

impairment income benefit period, the employee: (1) has an impairment rating of 15% or greater from the compensable injury; (2) has not returned to work or has returned to work earning less than 80% of the employee's average weekly wage as a direct result of the employee's impairment; (3) has not elected to commute a portion of the impairment income benefits; and (4) has compiled with the requirements adopted under §408.1415. Labor Code §408.143, Employee Statement, provides that after the Commissioner's initial determination of SIBs, an employee must file a statement with the insurance carrier stating that the employee has earned less than 80% of the employee's average weekly wage as a result of the impairment, the amount of wages earned during the quarterly filing period and that the employee has compiled with the requirements adopted under §408.1415. Labor Code §408.147, Contest of Supplemental Income Benefits By Insurance Carrier; Attorney's Fees, provides that an insurance carrier may request a Benefit Review Conference to dispute an injured employee's entitlement to SIBs, the time frame in which to do so and the consequences should the insurance carrier not prevail. Labor Code §408.150, Vocational Rehabilitation, provides that if the Division determines that an employee can be materially assisted by vocational rehabilitation or training services in returning to employment, the Division shall refer the employee to DARS and notify the insurance carrier of the need for vocational rehabilitation services. The carrier may provide the services through a private provider of vocational services. The statute also provides that an employee who refuses services or refuses to cooperate with services provided by DARs or a private provider loses entitlement to SIBs.

§130.101. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Application for Supplemental Income Benefits--The Division form required pursuant to Labor Code §408.143(b) containing the following information:

(A) a statement, with supporting payroll documentation, that the employee has earned less than 80% of the employee's average weekly wage as a direct result of the impairment from the compensable injury;

(B) the amount of the employee's wages during the qualifying period;

(C) a statement, with supporting documentation, that the employee has complied with Labor Code §408.1415 and this subchapter; and

(D) for self-employed individuals, copies of all supporting documentation to establish the amount of self-employment income earned during the qualifying period and any other pertinent documentation of efforts to establish or maintain a self-employed enterprise during the qualifying period.

(2) First Quarter--The 13 weeks beginning on the day after the last day of the impairment income benefits period.

(3) Impairment income benefits period--The number of weeks computed under Labor Code §408.121 for which the injured employee is entitled to receive impairment income benefits, starting with the day after the date the employee reached maximum medical improvement.

(4) Qualifying period--A period of time for which the employee's activities and wages are reviewed to determine eligibility for supplemental income benefits. The qualifying period ends on the 14th day before the beginning date of the quarter and consists of the 13 previous consecutive weeks. In accordance with §130.100(a) of this title (relating to Applicability), a qualifying period that begins on or after July 1, 2009, is subject to the provisions of this subchapter, and a qualifying period that begins prior to July 1, 2009, remains subject to the rules in effect on the date the qualifying period begins.

(5) Reviewing authority--The person who reviews the Application for Supplemental Income Benefits and other information to make the determination of entitlement or non-entitlement to supplemental income benefits including Division staff for the first quarter determination and the insurance adjuster for subsequent quarter determinations.

(6) Subsequent Quarter--A 13-week period beginning on the day after the last day of a previous quarter. The term subsequent quarter applies to all quarters after the first quarter.

(7) Vocational Rehabilitation Services--Services which can reasonably be expected to benefit the employee in terms of employability including, but not limited to, identification of the employee's physical and vocational abilities, training, physical or mental restoration, vocational assessment, transferable skills assessment, development of and modifications to an individualized vocational rehabilitation plan, or other services necessary to enable an injured employee to become employed in an occupation that is reasonably consistent with his or her strengths, physical abilities including ability to travel, educational abilities, interest, and pre-injury income level.

(8) Vocational rehabilitation program--Any program, provided by the Texas Department of Assistive and Rehabilitative Services (DARS), a comparable federally-funded rehabilitation program in another state under the Rehabilitation Act of 1973, as amended, or a private provider of vocational rehabilitation services that is included in the Registry of Private Providers of Vocational Rehabilitation Services, for the provision of vocational rehabilitation services designed to assist the injured employee to return to work that includes a vocational rehabilitation plan. A vocational rehabilitation plan, also known as an Individual Plan for Employment at DARS, includes, at a minimum, an employment goal, any intermediate goals, a description of the services to be provided or arranged, the start and end dates of the described services, and the injured employee's responsibilities for the successful completion of the plan.

(9) Wages--All forms of remuneration payable for personal services rendered during the qualifying period as defined in Labor Code §401.011(43), including the wages of a bona fide offer of employment which was not accepted.

§130.102. Eligibility for Supplemental Income Benefits; Amount.

(a) General. An injured employee is not entitled to supplemental income benefits until the expiration of the impairment income benefit period.

(b) Eligibility Criteria. An injured employee who has an impairment rating of 15% or greater, who has not commuted any impairment income benefits, who has not permanently lost entitlement to supplemental income benefits and who has completed and filed an Application for Supplemental Income Benefits in accordance with this subchapter is eligible to receive supplemental income benefits if, during the qualifying period, the injured employee:

(1) has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury; and

(2) has demonstrated an active effort to obtain employment in accordance with Labor Code §408.1415 and this section.

(c) Direct Result. An injured employee has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings.

(d) Work Search Requirements.

(1) An injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the following work search requirements each week during the entire qualifying period:

(A) has returned to work in a position which is commensurate with the injured employee's ability to work;

(B) has actively participated in a vocational rehabilitation program as defined in §130.101 of this title (relating to Definitions);

(C) has actively participated in work search efforts conducted through the Texas Workforce Commission (TWC);

(D) has performed active work search efforts documented by job applications; or

(E) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

(2) An injured employee who has not met at least one of the work search requirements in any week during the qualifying period is not entitled to SIBs unless the injured employee can demonstrate that he or she had reasonable grounds for failing to comply with the work search requirements under this section.

(e) Vocational Rehabilitation. As provided in subsection (d)(1)(B) of this section, regarding active participation in a vocational rehabilitation program, an injured employee shall provide documentation sufficient to establish that he or she has actively participated in a vocational rehabilitation program during the qualifying period.

(f) Work Search Efforts. As provided in subsection (d)(1)(C) and (D) of this section regarding active participation in work search efforts and active work search efforts, an injured employee shall provide documentation sufficient to establish that he or she has, each week during the qualifying period, made the minimum number of job applications and or work search contacts consistent with the work search contacts established by TWC which are required for unemployment compensation in the injured employee's county of residence pursuant to the TWC Local Workforce Development Board requirements. If the required number of work search contacts changes during a qualifying period, the lesser number of work search contacts shall be the required minimum number of contacts for that period. If residing out of state, the minimum number of work search contacts required will be the number required by the public employment service in accordance with applicable unemployment compensation laws for the injured employee's place of residence.

(g) Calculation of amount. Subject to any approved reduction for the effects of contribution, the monthly supplemental income benefit payment is calculated quarterly as follows:

(1) multiply the injured employee's average weekly wage by 80% (.80);

(2) add the injured employee's wages for all 13 weeks of the qualifying period;

(3) divide the total wages by 13;

(4) subtract this figure from the result of paragraph (1) of this subsection;

(5) multiply the difference by 80% (.80);

(6) if the resulting amount is greater than the maximum rate under the Act, Labor Code, §408.061, use the maximum rate; and,

(7) multiply the result by 4.34821.

(h) Maximum Medical Improvement and Impairment Rating Disputes. If there is no pending dispute regarding the date of maximum medical improvement or the impairment rating prior to the expiration of the first quarter, the date of maximum medical improvement and the impairment rating shall be final and binding.

(i) Services Provided by a Carrier Through a Private Provider of Vocational Rehabilitation Services. The insurance carrier may provide vocational rehabilitation services through a provider of such services provided that the individual is registered as a private provider in accordance with §136.2 of this title (relating to Registry of Private Providers of Vocational Rehabilitation Services) and that the insurance carrier will be responsible for reasonable travel expenses incurred by the injured employee if the employee is required to travel in excess of 20 miles one way from the injured employee's residence to obtain vocational rehabilitation services.

§130.103. Determination of Entitlement or Non-entitlement for the First Quarter.

(a) Division Determination. For each injured employee with an impairment rating of 15% or greater, and who has not commuted any impairment income benefits, the Division will make the determination of entitlement or non-entitlement for the first quarter of supplemental income benefits. This determination shall be made not later than the last day of the impairment income benefit period and the notice of determination shall be sent to the injured employee and the insurance carrier by first class mail, electronic transmission, or personal delivery.

(b) Determination of Entitlement. If the Division determines that the injured employee is entitled to supplemental income benefits for the first quarter, the notice of determination shall include:

(1) the beginning and end dates of the first quarter;

(2) the amount of the monthly payments;

(3) the amount of the wages used to calculate the monthly payment;

(4) instructions for the parties of the procedures for contesting the Division's determination as provided by §130.108 of this title (relating to Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney Fees); and

(5) an Application for Supplemental Income Benefits, filing instructions, a filing schedule, and a description of the consequences of failing to timely file.

(c) Determination of non-entitlement. If the Division determines that the injured employee is not entitled to supplemental income benefits for the first quarter, the notice of determination shall include:

(1) the grounds for this determination;

(2) the beginning and end dates of the first quarter;

(3) instructions for the parties of the procedures for contesting the Division's determination as provided by §130.108 of this title (relating to Contesting Entitlement to Supplemental Income Benefits); and

(4) an Application for Supplemental Income Benefits, filing instructions, a filing schedule, and a description of the consequences of failing to timely file.

§130.104. Determination of Entitlement or Non-entitlement for Subsequent Quarters.

(a) Subsequent Quarter Determination. After the Division has made a determination of entitlement or non-entitlement for supplemental income benefits for the first quarter, the insurance carrier shall make determinations for subsequent quarters consistent with the provisions contained in §130.102 of this title (relating to Eligibility for Supplemental Income Benefits; Amount). The insurance carrier shall issue a determination of entitlement or non-entitlement within 10 days after receipt of the Application for Supplemental Income Benefits for a subsequent quarter.

(b) Application for Supplemental Income Benefits. An injured employee claiming entitlement to supplemental income benefits for a subsequent quarter must send the insurance carrier an Application for Supplemental Income Benefits as required under this section. With the first monthly payment of supplemental income benefits for any eligible quarter and with any insurance carrier determination of non-entitlement, the insurance carrier shall send the injured employee a copy of the Application for Supplemental Income Benefits and the proper address to file the subsequent application. On the Application for Supplemental Income Benefits sent by the insurance carrier, the insurance carrier shall include:

(1) the number of the applicable quarter;

(2) the dates of the qualifying period;

(3) the dates of the quarter;

(4) the deadline for filing the application with the insurance carrier; and

(5) the minimum number of work search efforts required by §130.102(d)(1) and (f) of this title (relating to Eligibility for Supplemental Income Benefits; Amount) during the next qualifying period.

(c) Filing the Application for Supplemental Income Benefits. The employee shall file the Application for Supplemental Income Benefits and any applicable documentation with the insurance carrier by first class mail, personal delivery or electronic transmission. Except as otherwise provided in this section, the Application for Supplemental Income Benefits shall be filed no later than seven days before, and no earlier than 20 days before, the beginning of the quarter for which the injured employee is applying for supplemental income benefits. If the Application for Supplemental Income Benefits is received by the insurance carrier more than 20 days before the beginning of the quarter, the insurance carrier shall return the form to the injured employee with detailed instructions on when the form is required to be filed. Any form returned to the injured employee because the form was filed early shall not be subject to the provisions of §130.108 of this title (relating to Contesting Entitlement to Supplemental Income Benefits).

(d) Date-Stamp. Upon receipt, the insurance carrier shall date-stamp all Application for Supplemental Income Benefits forms with the date the insurance carrier received the form.

(e) Notice of Determination. Upon making subsequent quarter determinations, the insurance carrier shall issue a notice of determination to the injured employee. The notice shall be sent by first class mail, personal delivery or electronic transmission and shall contain all the information required in the Notice of Entitlement or Non-entitlement portion of the Application for Supplemental Income Benefits. The notice of determination of non-entitlement shall contain sufficient claim specific information to enable the employee to understand the reason for the insurance carrier's determination. A generic statement such as "failure to satisfy the compliance standards of Labor Code §408.1415", "not a direct result", or similar phrases without further explanation does not satisfy the requirements of this section.

(f) Accrual date. If the injured employee is entitled to supplemental income benefits for a subsequent quarter, the benefits begin to accrue on the later of:

(1) the first day of the applicable quarter; or

(2) the date the Application for Supplemental Income Benefits is received by the insurance carrier, subject to the provisions of §130.105 of this title (relating to Failure to Timely File Application for Supplemental Income Benefits; Subsequent Quarters).

(g) Changes in Amount. A change in the monthly amount of supplemental income benefits from one quarter to the next does not constitute a dispute subject to §130.108 of this title (relating to Contesting Entitlement to Supplemental Income Benefits). An insurance carrier that does not contest the entitlement to supplemental income benefits for a subsequent quarter, but determines a different monthly amount is due, shall:

(1) send the notice as required in subsection (e) of this section;

(2) include instructions about the procedures for contesting the insurance carrier's determination as provided by §130.108 of this title (relating to Contesting Entitlement to Supplemental Income Benefits); and

(3) issue payment based on the newly calculated amount.

§130.105. Failure to Timely File Application for Supplemental Income Benefits; Subsequent Quarters.

(a) Failure to timely file. An injured employee who does not timely file an Application for Supplemental Income Benefits with the insurance carrier shall not receive supplemental income benefits for the period of time between the beginning date of the quarter and the date on which the form was received by the insurance carrier, unless the following apply:

(1) the failure of the insurance carrier to timely mail the form to the injured employee as provided by §130.104 of this title (relating to Determination of Entitlement or Non-entitlement for Subsequent Quarters);

(2) the failure of the Division to issue a determination of entitlement or non-entitlement for the first quarter and the quarter applied for immediately follows the first quarter; or

(3) a finding of an impairment rating of 15% or greater in an administrative or judicial proceeding when the previous impairment rating was less than 15%.

(b) Calculation. If the injured employee has failed to timely file the Application for Supplemental Income Benefits and none of the exceptions listed in subsection (a) of this section apply, the payment of supplemental income benefits for that particular payment period shall be prorated as follows:

(1) divide the weekly amount of supplemental income benefits (as calculated pursuant to §130.102(g)(5) and (6) of this title (relating to Eligibility for Supplemental Income Benefits; Amount) by seven to determine the daily rate;

(2) calculate the number of days between the date the Application for Supplemental Income Benefits was received and the end of that particular payment period; and

(3) multiply the number of days and the daily rate to determine the amount of the payment.

§130.106. Loss of Entitlement to Supplemental Income Benefits.

(a) 12-Month Provision. Except as provided in §130.109 of this title (relating to Reinstatement of Entitlement if Discharged with Intent to Deprive of Supplemental Income Benefits), an injured employee who is not entitled to supplemental income benefits for a period of four consecutive quarters permanently loses entitlement to such benefits.

(b) 401-Week Provision. An injured employee permanently loses entitlement to supplemental income benefits upon the expiration of the 401-week period calculated pursuant to Labor Code §408.083. Except for situations where the injured employee has previously permanently lost entitlement to supplemental income benefits, the insurance carrier shall send two notices to the injured employee prior to the expiration of the 401-week period if the injured employee has submitted an Application for Supplemental Income Benefits during the 12 months immediately preceding the expiration of the 401-week period. This notification shall be in the form and manner prescribed by the Division and shall be sent:

(1) no later than four months prior to the expiration of the 401-week period; and

(2) one month prior to the expiration of the 401-week period.

(c) Refusal of Vocational Rehabilitation Services. An injured employee, in a vocational rehabilitation program as defined in §130.101(8) of this title (relating to Definitions), who refuses vocational rehabilitation services or refuses to cooperate with services provided at any time during a qualifying period is not entitled to supplemental income benefits for the related quarter.

§130.107. Payment of Supplemental Income Benefits.

(a) First Quarter. After the Division's initial determination of entitlement, the insurance carrier shall pay supplemental income benefits as follows:

(1) the first payment shall be made on or before the tenth day after the day on which the insurance carrier received the Division determination of entitlement or the seventh day of the quarter, whichever is later;

(2) the second payment shall be made on or before the 37th day of the first quarter; and

(3) the last payment shall be made on or before the 67th day of the first quarter.

(b) Subsequent Quarters. For subsequent quarters, the insurance carrier shall pay supplemental income benefits as follows:

(1) the first payment shall be made on or before the tenth day after the day on which the insurance carrier received the Application for Supplemental Income Benefits, or the seventh day of the quarter, whichever is later;

(2) the second payment shall be made on or before the 37th day of the quarter; and

(3) the last payment shall be made on or before the 67th day of the quarter.

§130.108. Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney Fees.

(a) Injured Employee Disputes. An injured employee may contest the determination by the Division or the insurance carrier regarding non-entitlement to, or the amount of, supplemental income benefits by requesting a benefit review conference as provided by Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference).

(b) Insurance Carrier Dispute; First Quarter. If an insurance carrier disputes a Division finding of entitlement to, or amount of, supplemental income benefits for the first quarter, the insurance carrier shall request a benefit review conference as provided by Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference) within 10 days after receiving the Division determination of entitlement. An insurance carrier waives the right to contest the Division determination of entitlement to, or amount of, supplemental income benefits for the first quarter if the request is not received by the Division within 10 days after the date the insurance carrier received the determination.

(c) Insurance Carrier Dispute; Subsequent Quarter With Prior Payment. If an insurance carrier disputes entitlement to a subsequent quarter and the insurance carrier has paid supplemental income benefits during the quarter immediately preceding the quarter for which the Application for Supplemental Income Benefits is filed, the insurance carrier shall dispute entitlement to the subsequent quarter by requesting a benefit review conference as provided by Chapter 141 of this title (relating to Dispute Resolution--Benefit Review Conference) within 10 days after receiving the Application for Supplemental Income Benefits. An insurance carrier waives the right to contest the entitlement to supplemental income benefits for the subsequent quarter if the request is not received by the Division within 10 days after the date the insurance carrier received the Application for Supplemental Income Benefits. The insurance carrier does not waive the right to contest entitlement to supplemental income benefits if the insurance carrier has returned the injured employee's Application for Supplemental Income Benefits pursuant to §130.104(c) of this title (relating to Determination of Entitlement or Non-entitlement for Subsequent Quarters).

(d) Insurance Carrier Disputes; Subsequent Quarter Without Prior Payment. If an insurance carrier disputes entitlement to a subsequent quarter and the insurance carrier did not pay supplemental income benefits during the quarter immediately preceding the quarter for which the Application for Supplemental Income Benefits is filed, the insurance carrier shall send the determination to the injured employee within 10 days of the date the form was filed with the insurance carrier and include the reasons for the insurance carrier's finding of non-entitlement and instructions about the procedures for contesting the insurance carrier's determination as provided by subsection (a) of this section.

(e) Liability. An insurance carrier who unsuccessfully contests a Division determination of entitlement to supplemental income benefits is liable for:

(1) all accrued, unpaid supplemental income benefits, and interest on that amount; and

(2) reasonable and necessary attorney's fees incurred by the injured employee as a result of the insurance carrier's dispute which have been ordered by the Division or court.

§130.109. Reinstatement of Entitlement if Discharged with Intent to Deprive of Supplemental Income Benefits.

(a) An injured employee who has lost entitlement to supplemental income benefits under §130.106(a) of this title (relating to Loss of Entitlement to Supplemental Income Benefits), and is discharged from employment within 12 months of losing entitlement, will become re-entitled if the employer discharged the injured employee with intent to deprive the injured employee of supplemental income benefits.

(b) An injured employee seeking reinstated supplemental income benefits under this section shall request a benefit contested case hearing, as provided by Chapter 142 of this title (relating to Dispute Resolution--Benefit Contested Case Hearing).

(c) The injured employee bears the burden of proof of discharge with intent to deprive.

(d) Supplemental income benefits reinstated under this section begin to accrue on the day after the injured employee's discharge.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2009.

TRD-200901074
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: July 1, 2009
Proposal publication date: October 3, 2008
For further information, please call: (512) 804-4715

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, §215.15 concerning enrollment standards, with changes to the proposed text as published in the January 16, 2009, issue of the *Texas Register* (34 TexReg 322) and will be republished.

The amendment adds language to 37 TAC §215.15(c) for medical and psychological evaluations to the enrollment requirements for basic peace officer training.

At this time, no comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, §1701.151, General Powers of Commission; Rulemaking Authority.

§215.15. Enrollment Standards.

(a) In order for an individual to enroll in any basic licensing course that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) written documentation that the person is currently licensed by the commission; or

(2) if the individual is not licensed by the commission, documentation that the individual has been subjected to a search of local, state and national records to disclose any criminal record;

(A) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(B) community supervision history:

(i) has never been on court-ordered community supervision or probation for any criminal offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order; but

(ii) the commission may approve the application of an individual who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to enrollment if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(C) conviction history:

(i) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years; but

(ii) the commission may approve the application of an individual who was convicted of a Class B misdemeanor at least five (5) years prior to enrollment if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period.

(D) For purposes of this section, the commission will construe any court ordered community supervision, probation, or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(i) another penal provision of Texas law; or

(ii) a penal provision of any other state, federal, military or foreign jurisdiction.

(E) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas law.

(F) has never been convicted of any family violence offense;

(G) is not prohibited by state or federal law from operating a motor vehicle;

(H) is not prohibited by state or federal law from possessing firearms or ammunition; and

(I) is a U.S. citizen.

(b) In order for an individual to enroll in any basic peace officer training program that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) a high school diploma;

(2) a high school equivalency certificate and evidence of successful completion of at least 12 hours from an institution of higher education with at least a 2.0 grade point average on a 4.0 scale; or

(3) an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

(c) In order for an individual to enroll in any basic peace officer training program that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

(1) written documentation that the individual has been examined by a physician, selected by the appointing, employing agency, or the academy, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought. The individual must be declared in writing by that professional to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought; and

(B) show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test; and

(2) written documentation that the individual has been examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought. This examination may also be conducted by a psychiatrist. The individual must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods:

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by §501.004, Occupations Code. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed.

(d) The enrollment standards established in this section do not preclude the licensed academy from establishing additional requirements or standards for enrollment in law enforcement training programs.

(e) The effective date of this section is May 1, 2009.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901086
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: May 1, 2009
Proposal publication date: January 16, 2009
For further information, please call: (512) 936-7713

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CHAPTER 217. LICENSING REQUIREMENTS

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts the repeal of and new §217.7, concerning Reporting the Appointment and Termination of a Licensee, without changes to the proposal as published in the January 16, 2009, issue of the *Texas Register* (34 TexReg 323) and will not be republished.

Through the adopted new §217.7, adopted to be effective May 1, 2009, the Commission is reflecting changes made by House Bill 2445 of the 80th Texas Legislature. The adopted action would repeal the current requirements from rule and specify the reporting requirements of an agency receiving a preemployment request and the termination reporting requirements.

Adopted new §217.7, Reporting the Appointment and Termination of a Licensee, would clarify the preemployment requirements, agency responsibilities, and break in service requirements.

At this time, no comments were received regarding adoption of this proposal.

37 TAC §217.7

The repeal is adopted in compliance with Texas Occupations Code, §1701.151 which authorizes the Commission to adopt rules for the administration of Chapter 1701.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901043
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: May 1, 2009
Proposal publication date: January 16, 2009
For further information, please call: (512) 936-7713

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37 TAC §217.7

The new section is adopted under Texas Occupations Code, §1701.151 which authorizes the Commission to adopt rules for the administration of Chapter 1701.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 12, 2009.

TRD-200901053
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: May 1, 2009
Proposal publication date: January 16, 2009
For further information, please call: (512) 936-7713

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CHAPTER 229. TEXAS PEACE OFFICERS' MEMORIAL

37 TAC §229.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §229.1, concerning General Eligibility of Deceased Texas Peace Officers, without changes to the proposed text as published in the January 16, 2009, issue of the *Texas Register* (34 TexReg 324) and will not be republished.

The amendment will change the title to reflect the title of Texas Government Code, §3105.003. Subsection (a) is amended to reflect changes to the Texas Government Code, §3105.003. These amendments are necessary to ensure that the Commission's rule is in compliance with the statute, which allows eligibility for federal law enforcement officers and municipal, county, or state corrections or detention officers.

At this time, no comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 11, 2009.

TRD-200901046

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: May 1, 2009

Proposal publication date: January 16, 2009

For further information, please call: (512) 936-7713

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 2. MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

SUBCHAPTER F. CONTINUITY OF SERVICES--STATE MENTAL RETARDATION FACILITIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §2.253, new §2.274, and the repeal of §2.274 in Chapter 2, Mental Retardation Authority (MRA) Responsibilities. The amendment to §2.253 is adopted with changes to the proposed text published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8723). New §2.274 and the repeal of §2.274 are adopted without changes to the proposed text.

The adopted rules describe the requirements for an MRA to conduct the community living options information process (CLOIP) for an adult resident of a state MR facility. In addition, the adopted rules describe the types of planning meetings in which living options are discussed for a resident, requirements regarding the notification by the state mental retardation (MR) facility of planning meetings, and the process and requirements by which planning meetings are conducted.

As required by Texas Government Code, §531.02442, a state MR facility was required to conduct a CLOIP for its residents to inform them of alternative living options. Texas Government Code, §531.02443 (as added by Senate Bill 27, Section 1, 80th Legislature, Regular Session, 2007), required DADS to contract with local MRAs to conduct this process for adult residents at state MR facilities who are at least 22 years of age.

The bill also required DADS to convene a committee comprised of members of the interagency task force on ensuring appropriate care settings for persons with disabilities (currently known as the Promoting Independence Advisory Committee), family members and legally authorized representatives (LARs) of adult residents of state MR facilities, persons with mental retardation, and representatives of state MR facilities and MRAs, to provide advice and assistance to DADS in developing the CLOIP to be conducted by the MRAs. The committee and DADS developed the CLOIP and agreed on materials to be used in conducting the CLOIP. The committee continues to meet with DADS staff monthly to discuss the effectiveness of the implementation, data analysis, and the development of additional informational materials to be used as part of the CLOIP. The CLOIP developed by DADS and the committee were used in drafting these rules.

In November 2007, DADS included a requirement in its contracts with 13 MRAs that have a state MR facility in their local service area to perform the CLOIP for residents at the state MR facility who are at least 22 years of age. The contracts include performance measures for the MRAs to meet in performing the CLOIP. Materials for use by the contract MRAs during the CLOIP were printed and distributed to the 13 MRAs. These and other CLOIP documents can be found on DADS website.

A change was made to the text in §2.253(45) in order to make the definition consistent with the language in §2.274(g)(4)(D).

DADS received written comments from Advocacy, Inc. A summary of the comments and the responses follow.

Comment: Regarding the definition of "consensus" in §2.253, the commenter recommended adding language about when consensus does not exist and the individual being unable to negotiate an agreement.

Response: The agency declines to revise the definition because §2.276(n), the section where the term is used, was not proposed for amendment and the process affected by this suggested revision is not within the scope of the amendment. The rule language was not changed in response to the comment.

Comment: Regarding the definition of "IDT (Interdisciplinary team)" in §2.253, the commenter suggested the following changes: (1) replace "may" with "shall" in subparagraph (B) to require the persons listed in subparagraph (B) to participate in an IDT meeting; (2) require the contract MRA to inform the individual and LAR that they may request a volunteer advocate with specific qualifications to assist in the CLOIP; and (3) for individuals who do not have an LAR and who have been determined by the state MR facility to lack capacity, require the contract MRA to attempt to designate a volunteer advocate to assist in the CLOIP.

Response: The agency declines to replace "may" with "shall" in subparagraph (B) because the agency does not have the authority to mandate the participation of either a person whose inclusion is requested by the individual or LAR or a representative of the appropriate school district in an IDT meeting. In addition, the agency declines to require the MRA to inform an individual or LAR that he or she may request a volunteer advocate to assist in the CLOIP or to attempt to designate a volunteer advocate to assist an individual who lacks capacity and does not have an LAR in the CLOIP. This is because the term "IDT" is used in situations other than when a CLOIP is conducted. For example, in §§2.255 - 2.267 an MRA IDT recommends state MR facility placement and in §2.268 a state MR facility IDT develops an individual program plan for a minor admitted under the Texas Family Code. In neither of these situations is the CLOIP conducted. It is therefore inappropriate to insert requirements unique to the CLOIP in the definition of IDT. The agency declines to add the suggested requirement about a volunteer advocate because no funds are available to develop the infrastructure necessary to support MRAs or other contractors in identifying, designating, and training public citizens to be effective volunteer advocates. The rule language was not changed in response to the comment.

Comment: Regarding the definition of "state MR facility living options instrument" in §2.253, the commenter suggested modifying language to state that the IDT would recommend the most *integrated* living arrangement appropriate for the individual.

Response: The agency declines to include the word "integrated" because there is no definition for the term in the rule. Additionally, the agency notes that the definition of "state MR facility living options instrument" is guided by the language in §2.274(g)(4)(D), which states that at the end of the planning meeting the IDT must document its recommendation of whether the individual should remain in the current living arrangement at the state MR facility or move to an alternative living arrangement.

Comment: The commenter stated that, since the style and substance of educational materials are crucial to education and awareness, a provision should be added to §2.274(a)(2)(D) to require the contract MRA to, as part of the CLOIP, "provide and explain other supplemental informational and educational materials developed by the MRA and approved by DADS that provide a more complete explanation of specific types of services within a geographic area." The commenter also suggested requiring the materials to be in a meaningful and consumer friendly format which may include written, audio, pictures, PowerPoint, CD, or DVD format. In addition, the commenter suggested a requirement that communication devices and techniques be utilized to facilitate the involvement of the individual and LAR.

Response: The agency declines to require the *contract* MRA to provide information about specific types of services within a *certain geographic area* because, in accordance with §2.274(d)(2), it is the state MR facility's responsibility to obtain this information from the *designated* MRA to include for consideration by the IDT in a planning meeting. The agency believes the designated MRA is the most appropriate party to gather such information because, in accordance with §2.275 and §2.276, the designated MRA is the entity primarily responsible for facilitating the process that enables a person to choose a specific alternative living arrangement. In its contract with the contract MRA, DADS requires the contract MRA to "provide and explain other informational and educational materials developed and approved by DADS that provide a more complete explanation of specific types of services." For consistency, the agency is requiring the supplemental material to be developed by DADS, not an MRA. Finally, the agency notes that language almost identical to that suggested by the commenter regarding the format of the materials and communication devices is included in the contract with the contract MRA. The rule language was not changed in response to the comment.

Comment: Regarding the contract MRA submitting the results of the CLOIP to the state MR facility in §2.274(a)(5)(A), the commenter requested that the contract MRA also submit the results to "the individual and their LAR, and their designated representatives, or concerned person."

Response: The agency responds that because the individual and LAR are members of the IDT and are provided the results of the CLOIP during the planning meeting that occurs after the CLOIP in accordance with §2.274(g)(2), it is not necessary to submit the CLOIP results to them at the same time as the state MR facility. Regarding submission of the CLOIP results to others, the agency responds that the contract MRA is not authorized to disclose confidential information to others without consent from the individual or LAR. However, if the individual or LAR invites a designated representative or a concerned person to the planning meeting in accordance with §2.274(e)(1), then the representative or concerned person will receive the results of the CLOIP. The rule language was not changed in response to the comment.

Comment: Regarding the contract MRA participating in a planning meeting in §2.274(a)(5)(B), the commenter recommended adding language to allow participation by telephone only if there is "good reason" to do so. Also, the commenter stated that if the contract MRA can be excluded from a planning meeting that includes a CLOIP discussion, then the contract MRA is unduly limited in providing the IDT information about the individual's or LAR's awareness of community living options. Therefore, the commenter suggested deleting the last phrase of the subparagraph which permits the individual or LAR to request the contract MRA *not* participate in the planning meeting.

Response: The agency declines to require an MRA to show good reason for participating in a planning meeting by telephone because the agency believes an MRA can effectively participate by telephone. Regarding the commenter's claim that the contract MRA would be unduly limited in providing the IDT information about the individual's or LAR's awareness of community living options if the contract MRA is not present at the planning meeting, the agency responds that the CLOIP results submitted by the contract MRA provide detailed information related to the individual's and LAR's awareness of community living options. The agency declines to delete the last phrase of the subparagraph because the agency expects the contract MRA to honor the individual's or LAR's request to not have the contract MRA participate in the planning meeting. The agency notes that in the past year, the individual or LAR requested that the MRA not participate in only seven percent of planning meetings held statewide. The rule language was not changed in response to the comment.

Comment: Also regarding the contract MRA participating in a planning meeting in §2.274(a)(5)(B), the commenter recommended adding language to require the contract MRA to "advocate for the individual or LAR who expressed a desire for an alternate living arrangement."

Response: The agency declines to add language as recommended by the commenter because it is not the role of the contract MRA to advocate for the individual or LAR who expressed

a desire for an alternate living arrangement. Texas Government Code, §531.02442(b), states that implementation of the CLOIP is to *inform* "persons with mental retardation in the institution and their legally authorized representatives of alternative community living options." The rule language was not changed in response to the comment.

Comment: Regarding a planning meeting conducted because the individual or LAR requests a discussion about living options in §2.274(c)(3), the commenter recommended adding language so that "another person on behalf of the individual" also be able to request a discussion about living options and a planning meeting will be conducted.

Response: The agency declines to add language as recommended by the commenter because Texas Government Code, §531.02442(c), limits who may request a CLOIP to "a person with mental retardation who resides in an institution or the person's legally authorized representative." The rule language was not changed in response to the comment.

Comment: Regarding the IDT's review of the individual's or LAR's awareness of living options explained by the designated MRA during the initial planning meeting in §2.274(g)(1), the commenter recommended requiring the IDT to include in a Personal Support Plan: (1) that the MRA place the individual in an alternative community living arrangement if the individual or LAR desires to pursue such a living arrangement and funds are available or on a waiting list; and (2) if appropriate, increase the LAR's awareness of community living options.

Response: The agency declines to add language regarding placing the individual in an alternative community living arrangement or on a waiting list because this language does not include the process for an individual moving from a state MR facility as described in §§2.274 - 2.278. The agency also declines to add the language regarding increasing the LAR's awareness of community living options because the state MR facility already performs this activity in conducting the initial planning meeting as described in the State MR Facility Living Options Instrument. The rule language was not changed in response to the comment.

Comment: The commenter requested language requiring designated MRAs to provide, upon request by the contract MRA, specific information about programs and services available where the individual or LAR, on behalf of the individual, is interested in living. The commenter also suggested adding language that allows the designated MRA to provide the information directly to the individual and LAR or to the contract MRA.

Response: The agency declines to add the suggested language because in accordance with §2.274(d)(2) it is the state MR facility's responsibility to obtain from the designated MRA specific information about services and supports in the area in which the individual is interested in living. The agency believes that the state MR facility is the most appropriate party to request and receive this information because it is responsible for coordinating the planning meetings at which community living options are discussed. The rule language was not changed in response to the comment.

Comment: The commenter requested language to state that if a community referral is anticipated, the designated MRA will participate in the annual or requested planning meeting in order to avoid delay of the process by having to conduct an additional planning meeting to include the designated MRA.

Response: Although the commenter's aim to avoid the rescheduling of a planning meeting is appreciated, the agency declines to add the requested language. This is because it is impracticable to mandate the attendance of the designated MRA representative at a planning meeting based on what could be tenuous anticipation by the state MR facility of a community referral. The rule language was not changed in response to the comment.

Comment: The commenter requested language to state that individuals and LARs will be offered the opportunity to visit living options available in the community and to visit with individuals or peers utilizing these options with their prior consent.

Response: The agency responds that the rule includes such language in §2.274(a)(2)(B). The rule language was not changed in response to the comment.

Comment: The commenter requested a provision requiring adequate notification of the contract MRA of a planning meeting under §2.274(c)(3) so the contract MRA has sufficient time to conduct a CLOIP with the individual and/or LAR, and their designated representatives, or concerned person.

Response: The agency responds that the rule includes such provisions in §2.274(a)(1)(B), (a)(3), (a)(4), and (d)(3)(B). Regarding the commenter's request that the CLOIP be conducted with the "the individual and/or LAR, and their designated representatives, or concerned person," the agency responds that Texas Government Code, §531.02442, limits the CLOIP to the individual and his or her LAR. However, DADS' contract with the contract MRA states that an individual or the LAR can designate any other significant person in his or her life, such as some other interested family member or friend, to be involved in the CLOIP discussions. The rule language was not changed in response to the comment.

Comment: The commenter requested four provisions be added to the rule: (1) The results of the individual's most recent annual planning meeting will be copied for the contract MRA record for preparation and use in CLOIP discussions with the individual and/or LAR. *An additional copy will be provided to the individual and/or LAR, and their designated representatives, or concerned person by the contract MRA SC (service coordinator) at the beginning of the CLOIP*. (2) The state MR facility qualified MR professional will continue to be responsible for contacting the individual and/or LAR, *and their designated representatives, or concerned person* and the designated MRA of the date, time and location of the annual planning meeting no later than 45 days in advance. (3) The state MR facility qualified MR professional will continue to have responsibility for discussions with the individual and/or LAR, *and their designated representatives, or concerned person* that are needed prior to the annual planning meeting, other than the CLOIP. (4) The contract MRA SC will participate in the SMRF planning meeting as a member of the IDT, in addition to the individual and/or LAR, *and their designated representatives, or concerned person*.

Response: The agency declines to add the requested provisions to the rule because, except for the italicized provisions, nearly identical provisions are included in the contract that DADS has with the contract MRA. Regarding the first three provisions, the italicized text is not included in the contract and the agency declines to include it in the rule because the contract MRA and state MR facility are not authorized to disclose confidential information to others without consent from the individual or LAR. Regarding the italicized text in the fourth provision, the agency notes that

§2.274(e) permits the individual or LAR to invite family members, friends, or other interested persons to a planning meeting. The agency declines to add the italicized text because DADS does not have the authority to mandate the participation of a person whose inclusion is requested by the individual or LAR. The rule language was not changed in response to the comment.

Comment: The commenter stated appreciation for DADS' use of respectful language (i.e., "individual" rather than "client") and further urged the department to replace the term "mental retardation" with "intellectual disability," beginning with these rules.

Response: The agency responds that replacing the term "mental retardation" may have broad implications in other areas (e.g., federal and state legislation, rules, clinical diagnosis, funding, and program eligibility). Although the agency has begun reviewing the potential impact of this change, it declines to begin using the term in this rule. The rule language was not changed in response to the comment.

DIVISION 1. GENERAL PROVISIONS

40 TAC §2.253

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; §531.02443, which requires DADS to contract with local mental retardation authorities to implement the community living options information process required by §531.02442 for adult residents of state MR facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§2.253. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Actively involved--Significant and ongoing involvement with the individual who does not have the ability to provide legally adequate consent and who does not have an LAR which the individual's planning team deems to be supportive based on the following:

(A) observed interactions of the person with the individual;

(B) advocacy for the individual;

(C) knowledge of and sensitivity to the individual's preferences, values and beliefs; and

(D) availability to the individual for assistance or support when needed.

(2) Applicant--An individual seeking residential services in a state MR facility.

(3) CARE--DADS' Client Assignment and Registration System, a database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested.

(4) CLOIP--Community living options information process. The activities described in §2.274(a)(2) of this subchapter (relating to Consideration of Living Options for Individuals Residing in State MR Facilities) performed by a contract MRA to provide information and education about community living options to an individual who is 22 years of age or older residing in a state MR facility or to the individual's LAR.

(5) Commissioner--The commissioner of DADS.

(6) Consensus--A negotiated agreement that all parties can and will support in implementation. The negotiation process involves the open discussion of ideas with all parties encouraged to express opinions.

(7) Contract MRA--An MRA that has a contract with DADS to conduct the CLOIP.

(8) CRCG (Community Resource Coordination Group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Health and Human Services Commission website at www.hhsc.state.tx.us/crcg/crcg.htm.

(9) DADS--The Department of Aging and Disability Services.

(10) Dangerous behavior--Behavior exhibited by an individual who is physically aggressive, self- injurious, sexually aggressive, or seriously disruptive and requires a written behavioral intervention plan to prevent or reduce serious physical injury to the individual or others.

(11) Department--Department of Aging and Disability Services.

(12) Designated MRA--The MRA assigned to an individual in CARE.

(13) Discharge--The release by DADS of an individual voluntarily admitted or committed by court order for residential mental retardation services from the custody and care of a state MR facility and termination of the individual's assignment to the state MR facility in CARE.

(14) Emergency admission/discharge agreement--A written agreement between the state MR facility, the individual or LAR, and the designated MRA, sample copies of which are available from the Department of Aging and Disability Services, Provider Services Division, State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030, that describes:

(A) the purpose of the emergency admission, including the circumstances that precipitated the need for the admission and the expected outcomes from the admission;

(B) the responsibilities of each party regarding the care, treatment, and discharge of the individual, including how the terms of the agreement will be monitored;

(C) the length of time of the emergency admission, which is that amount of time necessary to accomplish the purpose of the admission; and

(D) the anticipated date of discharge.

(15) Facility of record--The facility that serves the local service area(s) assigned to the individual's designated MRA.

(16) Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(17) Head of the facility--The superintendent or director of a state MR facility.

(18) ICAP (Inventory for Client and Agency Planning)--A validated, standardized assessment that measures the level of supervision an individual requires and, thus, the amount and intensity of services and supports the individual needs.

(19) ICAP service level--A designation that identifies the level of services needed by an individual as determined by the ICAP.

(20) IDT (Interdisciplinary team)--Mental retardation professionals and paraprofessionals and other concerned persons, as appropriate, who assess an individual's treatment, training, and habilitation needs and make recommendations for services, including recommendations of whether the individual is best served in a facility or in a community setting.

(A) Team membership always includes:

(i) the individual;

(ii) the individual's LAR, if any; and

(iii) persons specified by an MRA or a state MR facility, as appropriate, who are professionally qualified and/or certified or licensed with special training and experience in the diagnosis, management, needs, and treatment of individuals with mental retardation.

(B) Other participants in IDT meetings may include:

(i) other concerned persons whose inclusion is requested by the individual or the LAR;

(ii) at the discretion of the MRA or state MR facility, persons who are directly involved in the delivery of mental retardation services to the individual; and

(iii) if the individual is school eligible, representatives of the appropriate school district.

(21) Individual--A person who has or is believed to have mental retardation.

(22) Interstate transfer--The admission of an individual to a state MR facility directly from a similar facility in another state.

(23) IQ (intelligence quotient)--A score reflecting the level of an individual's intelligence as determined by the administration of a standardized intelligence test.

(24) LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(25) Legally adequate consent--Consent given by a person when each of the following conditions has been met:

(A) legal status: The individual giving the consent:

(i) is 18 years of age or older, or younger than 18 years of age and is or has been married or had his or her disabilities removed for general purposes by court order as described in the Texas Family Code, Chapter 31; and

(ii) has not been determined by a court to lack capacity to make decisions with regard to the matter for which consent is being sought;

(B) comprehension of information: The individual giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the individual with mental retardation; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence.

(26) Less restrictive setting--A setting which allows the greatest opportunity for the individual to be integrated into the community.

(27) Local service area--A geographic area composed of one or more Texas counties delimiting the population which may receive services from a local MRA.

(28) Mental retardation--Consistent with THSC, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(29) Minor--An individual under the age of 18.

(30) MRA (mental retardation authority)--An entity to which the Health and Human Services Commission's authority and responsibility described in THSC, §531.002(11) has been delegated.

(31) Natural support network--Those persons, including family members, church members, neighbors, and friends, who assist and sustain an individual with supports that occur naturally within the individual's environment and that are not reimbursed or purposely developed by a person or system.

(32) Ombudsman--Consistent with THSC, §533.039, an employee of DADS who is responsible for assisting an individual or LAR if the individual is denied a service by DADS, a DADS program or facility, or an MRA. The ombudsman must explain and provide information on DADS and MRA services, facilities, and programs, and the rules, procedures, and guidelines applicable to the individual denied services, and assist the individual in gaining access to an appropriate program or in placing the individual on an appropriate waiting list.

(33) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(34) Planning team--A group organized by the MRA and composed of:

(A) the individual;

(B) the individual's legally authorized representative (LAR), if any;

(C) actively-involved family members or friends of the individual who has neither the ability to provide legally adequate consent nor an LAR;

(D) other concerned persons whose inclusion is requested by the individual with the ability to provide legally adequate consent or the LAR;

(E) a representative from the designated MRA; and

(F) a representative from the individual's provider.

(35) PMRA--Persons with Mental Retardation Act, Texas Health and Safety Code, Title 7, Subtitle D.

(36) Provider--A public or private entity that delivers community-based residential services and supports for individuals, includ-

ing, but not limited to, an intermediate care facility for individuals with mental retardation (ICF/MR) or a nursing facility. The term also includes a public or private entity that provides waiver services.

(37) Related services--Services for school eligible individuals as described in 19 TAC §89.1060 (relating to Definitions of Certain Related Services).

(38) Respite admission/discharge agreement--A written agreement between the state MR facility, the individual or LAR, and MRA, sample copies of which are available from the Department of Aging and Disability Services, Provider Services Division, State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030, that describes:

(A) the purpose of the respite admission including the circumstances that precipitated the need for the admission and the expected outcomes from the admission;

(B) the length of time the individual will receive respite services from the state MR facility; and

(C) the responsibilities of each party regarding the care, treatment, and discharge of the individual.

(39) School eligible--A term describing those individuals between the ages of three and 22 who are eligible for public education services.

(40) Service delivery system--All facility and community-based services and supports operated or contracted for by DADS.

(41) Services and supports--Programs and assistance for persons with mental retardation that may include a determination of mental retardation, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(42) Significantly subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age- group mean for the tests used.

(43) State MH facility (state mental health facility)--A state hospital.

(44) State MR facility (state mental retardation facility)--A state school or a state center with a mental retardation residential component.

(45) State MR facility living options instrument--A written document used to guide the discussion of living options during a planning meeting that results in a recommendation by the IDT of whether the individual should remain in the current living arrangement at the state MR facility or move to an alternative living arrangement.

(46) THSC--Texas Health and Safety Code.

(47) Waiver services--Home and community-based services provided through a Medicaid waiver program approved by Centers for Medicare and Medicaid Services (CMS) as described in §1915(c) of the Social Security Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2009.

TRD-200901071
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 2, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 438-3734

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DIVISION 4. MOVING FROM A STATE MR FACILITY TO AN ALTERNATIVE LIVING ARRANGEMENT

40 TAC §2.274

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; §531.02443, which requires DADS to contract with local mental retardation authorities to implement the community living options information process required by §531.02442 for adult residents of state MR facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2009.

TRD-200901073
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 2, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 438-3734

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40 TAC §2.274

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; §531.02443, which requires DADS to contract with local mental retardation authorities to implement the community living options information process required by §531.02442 for adult residents of state MR facilities; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2009. ♦ ♦ ♦

TRD-200901072
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 2, 2009
Proposal publication date: October 24, 2008
For further information, please call: (512) 438-3734

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Commission on the Arts

Title 13, Part 3

The Texas Commission on the Arts (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Chapter 31 concerning Agency Procedures, Chapter 32 concerning Memoranda of Understanding, Chapter 35 concerning a Guide to Operations, Programs and Services, and Chapter 37 concerning Application Forms and Instructions for Financial Assistance. This review is done pursuant to Texas Government Code, §2001.039.

The Commission will assess whether the reason(s) for adopting or re-adopting these chapters continue to exist. Each section of each chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Commission, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Gary Gibbs, Executive Director, P.O. Box 13406, Austin, Texas 78711-3406. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-200901104
Gary Gibbs, Ph.D.
Executive Director
Texas Commission on the Arts
Filed: March 17, 2009

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Agreed Final Judgment and Permanent Injunction

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water and Health & Safety Codes. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: *State of Texas and Texas Commission on Environmental Quality v. Thunderbird Bay Water Services, Inc.,* Cause No. D-1-GV-04-0003188 in the 201st District, Travis County, Texas.

Background: This is a suit for enforcement of rules of the Texas Commission on Environmental Quality concerning a drinking water facility owned and operated by Thunderbird Bay Water Services, Inc.

Nature of Settlement: Proposed Agreed Judgment: The proposed Agreed Final Judgment and Permanent Injunction settles all of the State's claims in the suit. The Agreed Final Judgment and Permanent Injunction contains provisions for injunctive relief, civil penalties, and attorney's fees. The proposed judgment will enjoin the Thunderbird Bay Water Services, Inc., to correct violations at its public drinking water facility and to provide service within its certified area of service. The judgment awards the State attorney's fees of $50,000; and civil penalties of $70,000.

The Office of the Attorney General will accept written comments relating to this proposed judgment for thirty (30) days from the date of the publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the proposed judgment should be directed to Sarah Jane Utley, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911.

For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200901131
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: March 18, 2009

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period February 2009, as required by Tax Code, §202.058, is $39.19 per barrel for the three-month period beginning on November 1, 2008, and ending January 31, 2009. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of February 2009, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period February 2009, as required by Tax Code, §201.059, is $4.76 per mcf for the three-month period beginning on November 1, 2008, and ending January 31, 2009. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of February 2009, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200901110
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: March 17, 2009

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/23/09 - 03/29/09 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/23/09 - 03/29/09 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/09 - 04/30/09 is 5.00% for Consumer/Agricultural/Commercial/credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/09 - 04/30/09 is 5.00% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200901111
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 17, 2009

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Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received from TEC/TWC Credit Union, San Antonio, Texas. The credit union is proposing to change its name to Texas Workforce Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200901117
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 18, 2009

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Texas Dow Employees Credit Union, Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, or attend school in, and businesses and other legal entities located within a 10-mile radius of the branch office located at 550 Battleground Rd., La Porte, Texas, to be eligible for membership in the credit union.

An application was received from Bluebonnet Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in, businesses and other legal entities located within a 10 mile radius of the Credit Union's office located at 4508 Garth Road, Baytown, Texas 77521, to be eligible for membership in the credit union.

An application was received from Community Resource Credit Union, Baytown, Texas to expand its field of membership. The proposal would permit persons who work, reside, or attend school, and businesses located within a 10-mile radius of the Community Resource Credit Union office located at 6810 Garth Road, Baytown, TX, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200901116
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 18, 2009

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

United Energy Credit Union, Houston, Texas - See *Texas Register* issue dated August 29, 2008.

TCC Credit Union, Dallas, Texas - See *Texas Register* issue dated September 26, 2008.

Energy Capital Credit Union, Houston, Texas (Amended) - Persons who live, work, worship or attend school, and businesses and other legal entities located within a 10-mile radius of the following Energy Capital Credit Union office locations: 800 Bell Street, Houston, TX; 3120 Buffalo Speedway, Houston, TX; 4500 Dacoma, Houston, TX; 233 Benmar, Houston, TX; 13501 Katy Freeway, Houston, TX; 396 W. Greens Road, Houston, TX; and 18540 Northwest Freeway, Houston, TX.

First Service Credit Union, Houston, Texas - See *Texas Register* issue dated January 30, 2009.

Pioneer Muslim Credit Union, Houston, Texas - See *Texas Register* issue dated January 30, 2009.

TRD-200901118
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 18, 2009

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Texas Education Agency

Request for Applications Concerning the Career and Technical Education State Leadership Projects

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-09-110 from public postsecondary community and technical colleges and public institutions of higher education that have the capacity and resources to conduct statewide grant projects. Local school districts, charter schools, and shared services arrangements are not eligible to apply under this grant.

Applicants may apply for any or all of the projects under this grant; however, applicants that are awarded one of the six Career and Technical Education (CTE) Statewide Educational Excellence Cluster Grants are not eligible to receive an award for the CTE Professional Development Grants. Furthermore, the TEA reserves the right to limit the number of grants awarded to a single applicant and make awards that represent best value to the TEA. Performance and expenditure information on other TEA grants may be considered in awarding funds under this RFA.

Description. The purpose of the Career and Technical Education State Leadership Projects is to implement programs for statewide leadership and professional development related to career and technical education. The following projects are being requested under this RFA: (1) CTE

Statewide Leadership Grants, which include the six Educational Excellence Cluster Grants; and (2) CTE Professional Development Grants, which include the CTE College and Career Initiative Grant and the CTE Professional Development Grant.

Dates of Project. The Career and Technical Education State Leadership Projects will be implemented during the 2009-2010 school year. Applicants should plan for a starting date of no earlier than September 1, 2009, and an ending date of no later than August 31, 2010.

Project Amount. Funding will be provided for eight projects. Approximately $2.25 million is available for funding the Career and Technical Education State Leadership Projects during the September 1, 2009, through August 31, 2010, project period. Approximately $1.8 million is available for funding the CTE Statewide Leadership Grants and $450,000 for the CTE Professional Development Grants. Six grants will be awarded for the CTE Statewide Leadership Grants - Educational Excellence Cluster Grants in the amount of $300,000 each. Two grants will be awarded for the CTE Professional Development Grants: one grant of $300,000 for the CTE College and Career Initiative Grant, and one grant of $150,000 for the CTE Professional Development Grant. This project is funded 100 percent from federal leadership funds under the Carl D. Perkins Career and Technical Education Improvement Act of 2006 (P.L. 109-270), CFDA #84.048.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms for viewing and downloading. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Rebecca Schroeder, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact person identified in Part 2: Program Guidelines of the RFA. All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, May 14, 2009, to be eligible to be considered for funding.

TRD-200901125

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: March 18, 2009

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Request for Personal Financial Literacy Materials - High School Level for the 2009 - 2010 School Year

Description. The Texas Education Agency (TEA) is notifying organizations that personal financial literacy materials for use in high school economics courses may be submitted for review. Approved materials will be added to the *List of Approved Personal Financial Literacy Materials*. Personal financial literacy materials previously selected for the *List of Approved Personal Financial Literacy Materials* do not need to be resubmitted for approval. Texas Education Code (TEC), §28.002, authorizes the State Board of Education to approve materials for use in courses meeting a requirement for an economics credit under TEC, §28.025.

Program Requirements. Materials submitted for review may include any of the following areas of instruction: understanding interest; avoiding and eliminating credit card debt; understanding the rights and responsibilities of renting or buying a home; managing money to make the transition from renting a home to home ownership; starting a small business; being a prudent investor in the stock market and using other investment options; beginning a savings program and planning for retirement; bankruptcy; the types of bank accounts available to consumers and the benefits of maintaining a bank account; balancing a checkbook; the types of loans available to consumers and becoming a low-risk borrower; understanding insurance; and/or charitable giving.

Selection Criteria. Organizations will be responsible for submitting materials that they wish to be reviewed for consideration for inclusion on the *List of Approved Personal Financial Literacy Materials*. All materials submitted for review must satisfy at least one of the areas of instruction in the preceding list and must be submitted with a verification of the extent to which the areas are covered in the materials. The verification form may be downloaded from the TEA website at http://www.tea.state.tx.us/curriculum/social/verify.doc.

Materials must be submitted to Rosemary Morrow, Director, Social Studies, Texas Education Agency, Room 3-121, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), Friday, May 1, 2009, to be considered for inclusion on the *List of Approved Personal Financial Literacy Materials*.

TRD-200901126
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: March 18, 2009

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes,

which in this case is **April 27, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 27, 2009**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Brian Paul Boehning dba Boehning Dairy; DOCKET NUMBER: 2008-1955-MLM-E; IDENTIFIER: RN103991758; LOCATION: Lamb County; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 Texas Administrative Code (TAC) §321.36(1) and Texas Pollutant Discharge Elimination System (TPDES) Concentrated Animal Feeding Operation (CAFO) General Permit Number TXG920491 Part III.A.10(c), by failing to properly dispose of carcasses; 30 TAC §305.125(1) and TPDES CAFO General Permit Number TXG920491 Part III.A.4(c)(1) and (5), by failing to provide adequate wellhead protection for irrigation wells; 30 TAC §321.46(a)(7)(A) and TPDES CAFO General Permit Number TXG920491 Part III.A.2(a), by failing to update facility maps; 30 TAC §321.39(c)(2) and TPDES CAFO General Permit Number TXG920491 Part IV.B.3, by failing to provide written notification to the appropriate regional office at least ten days prior to cleaning out a retention control structure; 30 TAC §321.37(d) and TPDES CAFO General Permit Number TXG920491 Part III.A.5.(a)(1), by failing to retain and use wastewater in an appropriate and beneficial manner; and 30 TAC §335.6(a), by failing to notify the executive director that storage, processing, or disposal activities are planned; PENALTY: $4,380; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(2) COMPANY: CAHILL INVESTMENTS, INC. dba Resler Chevron; DOCKET NUMBER: 2008-1795-PST-E; IDENTIFIER: RN100823830; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the required underground storage tank (UST) records and make them immediately available for inspection; 30 TAC §334.7(d)(3), by failing to provide an amended UST registration to the agency for any change or additional information regarding USTs; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §37.835(b)(2), by failing to maintain a certificate of insurance as specified in the rules; and 30 TAC §115.242(3) and (3)(E) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition; PENALTY: $8,125; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: CPG Investments LLC and Aspri Investments, LLC dba Dill Food Mart; DOCKET NUMBER: 2008-1908-PST-E; IDENTIFIER: RN102374154; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(4) and the Code, §26.3475(d), by failing to provide corrosion protection to all underground metal components of an UST; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Delek Refining, Limited; DOCKET NUMBER: 2008-1670-AIR-E; IDENTIFIER: RN100222512; LOCATION: Tyler, Smith County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit (FOP) Number O-01257, Special Terms and Conditions (STC) Number 15, New Source Review (NSR) Permit Number 5955A, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to maintain carbon monoxide emissions; PENALTY: $26,500; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3434, (903) 535-5100.

(5) COMPANY: E.I. du Pont de Nemours and Company; DOCKET NUMBER: 2008-0971-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), NSR Permit Numbers 914 and 9176, SC Numbers 1, FOP Numbers O-02074 and O-02001, General Terms and Conditions (GTC), SC Numbers 8 and 15, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B), NSR Permit Number 914, SC Number 8, FOP Number O-02001, GTC, SC Number 1, and THSC, §382.085(b), by failing to properly report an emissions event; PENALTY: $12,859; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: E.I. du Pont de Nemours and Company; DOCKET NUMBER: 2008-1923-PWS-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: petrochemical refining; RULE VIOLATED: 30 TAC §290.42(d)(2)(E), by failing to provide an air gap connection to waste for the filter-to-waste connection; 30 TAC §290.42(d)(13), by failing to identify the chlorine dioxide line every five feet either by the use of a label or by various colors of paint; 30 TAC §290.41(e)(2)(C), by failing to post a sign at the raw water intakes warning that a restricted zone has been established and that all recreational activities and trespassing is prohibited within the area; 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap; 30 TAC §290.42(e)(3)(A), by failing to provide disinfection equipment with a capacity of at least 50% greater than the highest expected disinfectant dosage; 30 TAC §290.42(1), by failing to maintain an up-to-date plant operations manual; 30 TAC §290.43(c)(8), by failing to maintain the facility's clearwell in strict accordance with current American Water Works Association standards; 30 TAC §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain the residual disinfectant concentration in the water of at least 0.2 milligrams per liter (mg/L) free chlorine; 30 TAC §290.46(n)(2), by failing to provide an up-to-date map of the distribution system; 30 TAC §290.42(d)(2)(D), by failing to properly locate the filter so that common walls do not exist between the filter and aerators, mixing, and sedimentation basins or clearwells; and 30 TAC §21.4, by failing to pay all consolidated water quality fees; PENALTY: $3,712; ENFORCEMENT COORDINATOR: Epi-

fanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Federal Bureau of Prisons; DOCKET NUMBER: 2008-1823-PWS-E; IDENTIFIER: RN102043452; LOCATION: Seagoville, Dallas County; TYPE OF FACILITY: prison with public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(i), by failing to collect a minimum of three repeat distribution coliform samples; 30 TAC §290.109(f)(3) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total coliform; and 30 TAC §290.109(c)(2)(A)(ii) and THSC, §341.033(d), by failing to collect routine distribution coliform samples; PENALTY: $1,079; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Michael D. Rose dba Freeway Chevron; DOCKET NUMBER: 2009-0037-PST-E; IDENTIFIER: RN101657815; LOCATION: Sierra Blanca, Hudspeth County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: $5,100; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(9) COMPANY: City of Hackberry; DOCKET NUMBER: 2008-1741-MWD-E; IDENTIFIER: RN102077054; LOCATION: near Hackberry, Denton County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013434001, Interim Effluent Limitation and Monitoring Requirements Numbers 1, 2, and 6, and the Code, §26.121(a), by failing to comply with permit effluent limits for dissolved oxygen, total suspended solids, chlorine, five-day carbonaceous biochemical oxygen demand; PENALTY: $7,800; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Hewitt; DOCKET NUMBER: 2008-1946-PWS-E; IDENTIFIER: RN101260545; LOCATION: Hewitt, McLennan County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(e), by failing to provide all potable water storage tanks and pressure maintenance facilities with an intruder-resistant fence with lockable gates; 30 TAC §290.41(c)(3)(A), by failing to obtain approval from the executive director prior to using a well as a public water supply source; 30 TAC §290.46(f)(2) and (3)(B)(v), by failing to maintain a record of water works operation and maintenance activities; 30 TAC §290.42(e)(4)(B), by failing to protect the gas chlorine cylinders from adverse weather conditions and vandalism; 30 TAC §290.42(e)(4)(C), by failing to provide screened vents on the gas chlorine rooms; 30 TAC §290.46(t), by failing to post a legible sign at each production, treatment, and storage facility that includes the name of the water supply and an emergency telephone number; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, water storage, and pressure maintenance facilities, and all related appurtenances in a watertight condition; 30 TAC §290.43(c)(4), by failing to provide all clearwells and water storage tanks with a liquid level indicator; 30 TAC §290.43(d)(3), by failing to equip all air compressor injection lines with filters or other devices to prevent compressor lubricants or other contaminants from entering the pressure tank; and 30 TAC §290.42(l), by failing to compile a thorough plant operations manual for operator review and reference; PENALTY: $5,636; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: IH 10/FIS Building, L.P.; DOCKET NUMBER: 2009-0063-PWS-E; IDENTIFIER: RN104394366; LOCATION: Bexar County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine coliform samples and by failing to provide public notification of the failure to sample; and 30 TAC §290.109(c)(3)(A)(ii), by failing to collect a set of repeat coliform samples; PENALTY: $2,665; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Ingram Concrete, LLC; DOCKET NUMBER: 2008-1957-AIR-E; IDENTIFIER: RN100805613; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: ready-mixed concrete plant; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to control particulate emissions; and 30 TAC §106.201(4) (repealed June 30, 2004) and THSC, §382.085(b), by failing to comply with Permit by Rule Registration Number 44504; PENALTY: $4,050; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: City of Kerens; DOCKET NUMBER: 2008-1486-MWD-E; IDENTIFIER: RN101919553; LOCATION: Navarro County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4) and TPDES Permit Number WQ0010745001, Permit Conditions Number 2.g, by failing to prevent an unauthorized discharge of wastewater; 30 TAC §217.330(b) (formerly 30 TAC §317.4(a)(8) and §317.7(i)), by failing to have the reduced-pressure principle backflow prevention device tested annually by a certified technician; 30 TAC §305.125(17) and TPDES Permit Number WQ0010745001, Sludge Provisions, by failing to timely submit the annual sludge reports; 30 TAC §305.125(9) and TPDES Permit Number WQ0010745001, Monitoring and Reporting Requirements Number 7, by failing to report orally and submit noncompliance notifications for an unauthorized discharge; 30 TAC §305.125(1) and TPDES Permit Number WQ0010745001, Monitoring and Reporting Requirements Number 5, by failing to calibrate all flow measuring devices at least annually; 30 TAC §305.125(1), TPDES Permit Number WQ0010745001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; 30 TAC §305.125(5) and TPDES Permit Number WQ0010745001, Operational Requirements Number 1, by failing to operate and maintain the treatment units of the facility; 30 TAC §305.125(9) and TPDES Permit Number WQ0010745001, Monitoring and Reporting Requirements Number 7.c, by failing to submit noncompliance notifications for effluent violations more than 40% above the permitted limitation; and 30 TAC §319.6 and §319.11 and TPDES Permit Number WQ0010745001, Monitoring and Reporting Requirements Number 2, by failing to utilize the quality assurance requirements and effluent analysis methods required; PENALTY: $16,725; Supplemental Environmental Project (SEP) offset amount of $16,725 applied to holding two one-day events for the collection, recycling, or proper disposal of tires, batteries, electronics, and lawn clippings; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Killeen Majestic Homes, Inc.; DOCKET NUMBER: 2008-1889-WQ-E; IDENTIFIER: RN105623870; LOCATION: Waco, McLennan County; TYPE OF FACILITY: residential construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain

authorization to discharge storm water associated with construction activities; PENALTY: $2,700; ENFORCEMENT COORDINATOR: Carlie Konkol, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Load Trail, Limited; DOCKET NUMBER: 2008-1464-AIR-E; IDENTIFIER: RN101462570; LOCATION: Sumner, Lamar County; TYPE OF FACILITY: trailer manufacturing plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2), and 122.146(1), FOP Number O-02412, GTC, and THSC, §382.085(b), by failing to submit five annual compliance certifications and associated deviation reports; 30 TAC §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to have authorization to operate a source of air emissions; and 30 TAC §122.121 and §122.241(b) and THSC, §382.085(b), by operating emissions units with an expired FOP; PENALTY: $68,250; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: John R. Murff; DOCKET NUMBER: 2008-1826-PST-E; IDENTIFIER: RN101660694; LOCATION: Jewett, Leon County; TYPE OF FACILITY: USTs; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system; PENALTY: $5,450; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: Norit Americas, Inc.; DOCKET NUMBER: 2008-1671-AIR-E; IDENTIFIER: RN102609724; LOCATION: Marshall, Harrison County; TYPE OF FACILITY: powdered activated carbon manufacturing plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(A) and (B), and 122.146(1), FOP Number O1379, GTC, STC Number 8, and THSC, §382.085(b), by failing to submit annual compliance certifications and semi-annual deviation reports; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 3068A, SC Number 3, FOP Number O1379, STC Number 6, and THSC, §382.085(b), by failing to perform stack sampling for particulate matter; 30 TAC §116.115(c), NSR Permit Number 56552, SC Number 12.D., and THSC, §382.085(b), by failing to maintain records of venturi scrubber liquid flow rate; 30 TAC §101.201(a)(2)(F), (b), and (c) and THSC, §382.085(b), by failing to include all individually listed compounds on the initial report; and 30 TAC §116.115(c), NSR Permit Number 5725A, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $28,760; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: PEACE PARTNERS CAR WASH, L.L.C. dba Super Stop 28; DOCKET NUMBER: 2008-1860-PST-E; IDENTIFIER: RN100813682; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(C) and (5)(B)(i), by failing to renew a delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection; 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II VRS; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.246(1), (3), and (5) and THSC, §382.085(b), by failing to maintain Stage II records at the station; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS; PENALTY: $34,946; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(19) COMPANY: Mendi T. Momin dba Pedernales Country Store; DOCKET NUMBER: 2008-1837-PST-E; IDENTIFIER: RN101509891; LOCATION: Spicewood, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to provide release detection for the UST system by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; and 30 TAC §334.45(c)(3)(A), by failing to install and maintain a secure anchor at the base of each emergency shutoff valve in a piping system; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(20) COMPANY: Frank Prado dba Prado's Backhoe Service; DOCKET NUMBER: 2008-1682-SLG-E; IDENTIFIER: RN103154936; LOCATION: Ricardo, Kleberg County; TYPE OF FACILITY: sludge transporter business; RULE VIOLATED: 30 TAC §312.145(c)(2), by failing to submit to the executive director a letter describing significant trip ticket discrepancies and attempts to reconcile the discrepancies; 30 TAC §312.145(b)(4), by failing to submit annual summaries of activities; and 30 TAC §312.147(b), by failing to obtain written approval from the executive director to temporarily store waste at a fixed or permanent site; PENALTY: $8,950; ENFORCEMENT COORDINATOR: Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(21) COMPANY: PRO MOBIL, INC. dba Pro Mobil; DOCKET NUMBER: 2008-1730-PST-E; IDENTIFIER: RN100617943; LOCATION: Richardson, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; and 30 TAC §334.49(b)(3)(B) and the Code, §26.3475(d), by failing to maintain the interstitial space between the protected component and the secondary containment device free of any soil, backfill material, groundwater, or other substances, and inspect and test the protected

component for electrical isolation; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: Richdairy Ventures Inc dba High Five Food Store 21; DOCKET NUMBER: 2008-1861-PST-E; IDENTIFIER: RN103961363; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(3), by failing to report a suspected release; and 30 TAC §334.74, by failing to investigate a suspected release; PENALTY: $10,100; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: RJR Bioenergy, Inc.; DOCKET NUMBER: 2008-1638-MSW-E; IDENTIFIER: RN102831674; LOCATION: Mathis, San Patricio County; TYPE OF FACILITY: used oil transporter and transfer; RULE VIOLATED: 30 TAC §324.11 and 40 CFR §279.45(d) and (e), by failing to provide secondary containment for the aboveground storage tanks used to store used oil and for the area utilized to store drums and totes containing used oil; 30 TAC §324.11 and 40 CFR §279.45(h)(3), by failing to clean up and manage properly the release of used oil; and 30 TAC §324.22(b), by failing to provide proof of financial assurance; PENALTY: $7,761; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(24) COMPANY: City of San Marcos; DOCKET NUMBER: 2009-0256-WQ-E; IDENTIFIER: RN105654982; LOCATION: Hays County; TYPE OF FACILITY: wastewater interceptor; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(25) COMPANY: SHAKU BROTHERS INC. dba Memorial Hill Food Mart; DOCKET NUMBER: 2008-1862-PST-E; IDENTIFIER: RN101817740; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; and 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; PENALTY: $1,540; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: City of Texarkana; DOCKET NUMBER: 2008-0632-PWS-E; IDENTIFIER: RN101200665; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level of 0.080 mg/L for total trihalomethanes; PENALTY: $715; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(27) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2008-0843-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Numbers 20432/PSD-TX-994M1, 834, 7386, 20909, 22072, and 46431, SC Numbers 1 and III-1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §§101.20(1), 101.221(a), and 116.115(c), Air Permit Number 8567, SC Numbers, 1, 4B, and 10, 40 CFR §60.18(c)(2) and (3)(ii), and THSC, §382.085(b), by failing to prevent unauthorized emissions and maintain a flare flame; PENALTY: $202,325; SEP offset amount of $101,162 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(28) COMPANY: United States Postal Service; DOCKET NUMBER: 2008-1928-EAQ-E; IDENTIFIER: RN105660054; LOCATION: Austin, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(29) COMPANY: YASHINHA, INC. dba Forum 303 Chevron; DOCKET NUMBER: 2008-1686-PST-E; IDENTIFIER: RN102319910; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; 30 TAC §115.246(1) and (7)(A) and THSC, §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review; 30 TAC §115.244(3) and THSC, §382.085(b), by failing to conduct monthly inspections of the Stage II VRS; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition and free of defects; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; PENALTY: $19,057; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: John Yturri; DOCKET NUMBER: 2009-0015-MLM-E; IDENTIFIER: RN105629166; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULE VIOLATED: 30 TAC §111.201 and §330.15(c) and THSC, §382.085(b), by failing to comply with the general prohibition on outdoor burning and to prevent unauthorized disposal of municipal solid waste; PENALTY: $5,553; ENFORCEMENT COORDINATOR: Ross Fife, (512) 239-2541; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200901100
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 17, 2009

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Notice of Public Hearing on Proposed Repeals to 30 TAC Chapter 106

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed repeals to 30 TAC Chapter 106, Permits by Rule.

The proposed rulemaking would repeal nine permits by rule that were added with no change to the list of De Minimis Facilities or Sources (30 TAC §116.119) in May 2008 in order to eliminate duplication and provide a clear regulatory structure. The permits by rule to be repealed are §106.101, Domestic Use Facilities; §106.103, Air Conditioning and Ventilation Systems; §106.121, Hydraulic and Hydrostatic Testing Equipment; §106.123, Vacuum-producing Devices for Laboratory Use; §106.228, Platen Presses for Laminating; §106.282, Feed Grinding Facilities; §106.291, Cotton Gin Stands; §106.312, Wax Melting and Application; and §106.413, Bond Lining to Brake Shoes.

The commission will hold a public hearing on this proposal in Austin on April 27, 2009 at 10:00 a.m. in Building C, Room 131E, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Jessica Rawlings, Office of Legal Services at (512) 239-0177.

Comments may be submitted to Jessica Rawlings, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2008-029-106-PR. The comment period closes April 30, 2009. Copies of the proposed rulemaking can be obtained from the commission's web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Johnny Bowers, Air Permits Division, at (512) 239-6770.

TRD-200901063
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 12, 2009

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Notice of Public Hearing on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission or TCEQ) will conduct a public hearing to receive testimony regarding proposed revisions to the state implementation plan (SIP) to meet the requirements of the Federal Clean Air Act (FCAA), §§107(d)(3)(E), 110(a)(2)(D)(i), and 175A relating to a second ten-year maintenance plan regarding the 1978 lead National Ambient Air Quality Standard (NAAQS) for Collin County. This public hearing will also receive testimony regarding an agreed order with Exide Technologies that would make contingency measures for the second ten-year maintenance plan legally enforceable.

The proposed SIP revision would implement FCAA requirements for a second ten-year maintenance plan for an area redesignated to attainment in 1999 for the 1978 lead NAAQS.

A public hearing on this proposal will be held in Frisco, on April 20, 2009, at 2:00 p.m., at the City of Frisco, City Council Chambers, located in the George A. Purefoy Municipal Center, 6101 Frisco Square Boulevard. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, TCEQ staff will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer at (512) 239-5017. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, MC 206, Air Quality Planning Section, Chief Engineer's Office, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-5687. Electronic comments may be submitted at *www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments pertaining to the second ten-year maintenance plan regarding the 1978 lead NAAQS for Collin County should reference Project Number 2008-020-SIP-NR. The comment period closes on April 24, 2009. Copies of the proposed SIP revision and agreed order may be viewed at the commission's Web site at *http://www.tceq.state.tx.us/implementation/air/sip/Hottop.html*. For further information, please contact Jim Price, Air Modeling and Data Analysis Section, (512) 239-1803.

TRD-200901101
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 17, 2009

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Notice of Public Hearing on Proposed Substitutions to Certain Transportation Control Measures Contained in the Dallas-Fort Worth Area State Implementation Plan

The Texas Commission on Environmental Quality (commission), in coordination with the North Central Texas Council of Governments (NCTCOG), serving as the Metropolitan Planning Organization (MPO) for the Dallas-Fort Worth metropolitan area (DFW), proposes to substitute certain transportation control measures (TCM) contained in the DFW state implementation plan (SIP). As provided by commission rules, the commission and the NCTCOG have initiated a process to approve substitute TCMs for the DFW SIP. Documentation regarding each proposed substitute TCM is available for public review at the commission's Web site located at *http://www.tceq.state.tx.us/implementation/air/sip/tcm_dfw.html*. Documentation may also be obtained from Madhusudhan Venugopal, Senior Transportation Planner, North Central Texas Council of Governments, P.O. Box 5888, Arlington, Texas 76005-5888, or at (817) 608-2333.

The commission will hold a public hearing on this proposal on April 17, 2009, at 6:00 p.m., at the North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas in the William J. Pitstick Executive Board Room. The hearing will be structured for the receipt of oral and/or written comments from interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Madhusudhan Venugopal at (817) 608-2333. Requests for special accommodations should be made as far in advance as possible. Comments may be submitted to Koy Howard, Texas Commission on Environmental Quality, Air Quality Section, MC 164, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-1500. Electronic comments may be submitted at *www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Project Number 2009-022-OTH-NR, Transportation Control Measure Substitution for the DFW area. The comment period closes on April 20, 2009. For further information, please contact Mr. Koy Howard of the Air Quality Division at (512) 239-2306.

TRD-200901102
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 17, 2009

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Notice of Water Quality Applications

The following notices were issued during the period of March 10, 2009 through March 12, 2009.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

Luminant Generation Company LLC, which operates Lake Creek Steam Electric Station, has applied for a renewal of TPDES Permit No. WQ0000954000, which authorizes the discharge of once through cooling water and previously monitored effluents (cooling tower blowdown, low volume wastes, and metal cleaning wastes) at a daily average flow not to exceed 294,000,000 gallons per day via Outfall 001; low volume wastes and storm water runoff from yard drains and diked oil storage areas on a flow variable basis via Outfall 002; and low volume wastes from water treatment on an intermittent and flow variable basis via Outfall 003. The facility is located at 4278 West Lake Creek Road, on the west shore of Lake Creek Lake along Farm-to-Market Road 1860, approximately four miles southwest of the City of Riesel in McLennan County, Texas.

International Paper Company, which operates the Texarkana Mill which produces bleached kraft pulp and paperboard, has applied for a major amendment to TPDES Permit No. WQ0001339000 to authorize the removal of permit limits for aluminum at Outfalls 001A and 001B, the reduction of monitoring frequency for various parameters at Outfalls 001A and 001B, the increase of the permit limits for Adsorbable Organic Halides (AOX) at Outfalls 001A and 001B, to increase the permit limits for chloroform at internal Outfalls 102 and 103, the reduction of the monitoring frequency for various parameters at Outfalls 102 and 103, the addition of a provision to define compliance with disolved oxygen limit at Outfall 001 during periods of low dissolved oxygen, and the correction of typographical errors in the previous permit. The current permit authorizes the discharge of treated process wastewater, water treatement wastes, utility wastewater (boiler blowdown, cooling tower blowdown, and demineralizer water), and stormwater on an intermittent and flow variable basis via Outfalls 001A and 001B. The total volume discharged during any 24-hour period shall not exceed 646,300,000 gallons per day via Outfalls 001A and 001B. The facility is located approximately 14 miles south of the City of Texarkana and five miles east (via Farm-to-Market Road 3129) of US Highway 59 at a site adjacent to and south of the Sulphur River, bounded on the east by the Kansas City Southern Railway and on the west by the Texas and Pacific Railway, Cass County, Texas.

Brazos Electric Power Cooperative, Inc., which operates the Randall W. Miller steam electric generating station, has applied for a renewal of TPDES Permit No. WQ0001903000, which authorizes the discharge of once-through cooling water at a daily average flow not to exceed 400,000,000 gallons per day via Outfall 001, and low volume wastewater, storm water, and previously monitored effluents (metal cleaning wastes) on an intermittent and flow variable basis via Outfall 002. The facility is located on the west shore of Lake Palo Pinto, three miles east of Farm-to-Market Road 919, approximately 11 miles north of the City of Gordon, Palo Pinto County, Texas.

V&M Star, A Partnership with General and Limited Partners, LP, which operates V&M Star, a tubular goods end finishing plant, has applied for a major amendment to TPDES Permit No. WQ0003787000 requesting authorization for: (1) replacement of the existing wastewater treament facility, (2) use of treated sanitary wastewater as make-up process water prior to its eventual discharge via Outall 002, and (3) discharge of wastewaters from hydrostatic tester area, straightener pit area, and secondary containment structures via Outfall 002, after these wastewaters are pretreated using oil/water separator. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 23,000 gallons per day via Outfall 001; and discharge of treated process wastewater as blowdown from the cooling tower at a daily average flow not to exceed 80,000 gallons per day via Outfall 002. The facility is located at 8603 Sheldon Road, approximately 1.5 miles south of the intersection of Sheldon Road and U.S. Highway 90, in the City of Channelview, Harris County County, Texas.

Sanderson Farms, Inc. (Production Division), which operates the Sanderson Farms Franklin Feed Mill and Truck Shop, has applied for a major amendment to TPDES Permit No. WQ00003847000 to authorize removal of Oil and Grease effluent limits and monitoring requirements; increase the daily average permitted flow from 29,000 gallons per day to 40,000 gallons per day, and daily maximum flow from 40,000 gallons per day to 80,000 gallons per day; report flow to evaporation pond as daily average instead of monthly average; and increase the discharge to evaporation pond from 857 gallons to 1,500 gallons. The current permit authorizes the discharge of boiler blowdown at a daily average flow not to exceed 29,000 gallons per day and daily maximum not to exceed 40,000 gallons per day; and the disposal of truck wash water at a daily average flow not to exceed 857 gallons per day via evaporation. The facility is located on U.S. Highway 79 approximately 3.2 miles northeast of the intersection of U.S. Highway 79 and State Road 1940 in the Community of New Baden, Robertson County, Texas.

Duratherm Asset Acquisition Corp., which operates a facility that treats oily waste from the petroleum refining and petrochemical industries and creates fuel for cement kilns, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0004086000, which authorizes the discharge of storm water associated with industrial activity. The facility is located at at 2700 Avenue S, near the intersection of 27th Street and Avenue S, approximately 3/4 mile east of State Highway 146 at Dickinson Bayou, approximately two miles southeast of the city of Bacliff, in Galveston County, Texas.

Wolf Hollow I, LP, which operates Wolf Hollow I, has applied for a renewal of TPDES Permit No. WQ0004288000, which authorizes the discharge of cooling tower blowdown, boiler blowdown and previously monitored effluent (low volume wastewater from internal Outfall 101)

at a daily average flow not to exceed 1,100,000 million gallons per day via Outfall 001. The facility is located at the intersection of Wolf Hollow Court and Farm-to-Market Road 2425, approximately 1.1 miles east of the intersection Farm-to-Market Road 2425 and State Highway 144, Hood County, Texas.

Synagro of Texas-CDR, Inc., 1002 Village Square Drive, Suite C, Tomball, Texas 77375, has applied for a renewal of Permit No. 04441, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 4914.35 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located adjacent to the north side of Farm-to-Market Road 1093, extending north to Farm-to-Market Road 3013, approximately 4.5 miles east of the City of Eagle Lake, and immediately west and south of the San Bernard River in Colorado and Wharton County, Texas.

Synagro of Texas-CDR, Inc. has applied for a renewal of Permit No. 04504, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 475.7 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located 7 miles north of north of Paynor, on Farm-to-Market Road 315 at the Bill Miller Tree Farm in Henderson County, Texas.

Upper Leon River Municipal Water District has applied for a renewal of Permit No. 04626, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 0.71 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located adjacent to an unnamed road approximately 0.1 miles north of Farm-to-Market Road 2861, approximately 1.8 miles north of the intersection of Farm-to-Market Road 2861 and US Highway 67 in Comanche County, Texas.

Sabine River Authority-State of Louisiana Entergy Texas, Inc, which proposes to operate Toledo Bend Dam, a hydroelectric generating facility, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004845000, to authorize the discharge of once through non-contact cooling water at a daily average flow not to exceed 1,200,000 gallons per day via Outfall 001; low volume wastewater at a daily average flow not to exceed 36,000 gallons per day via Outfall 002; and storm water runoff on an intermittent and flow variable basis via Outfall 003. The facility is located 15 miles northeast of Burkeville, Texas on State Highway 692, approximately 0.6 mile northeast of the intersection with Sate Highway 255, Newton County, Texas.

TRS Enviroganics Inc. has applied for a new permit, Proposed Permit No. WQ0004861000, to authorize the land application of sewage sludge for beneficial use on 655.14 acres. This permit will not authorize a discharge of pollutants into waters in the State. The land application site is located approximately 1.25 miles west of the intersection of Farm-to-Market Road 2221 and Seven Mile Road in Hidalgo County, Texas.

City of Thorndale has applied for a renewal of TPDES Permit No. WQ0010302001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day. The facility is located on the west side of Farm-to-Market Road 486, approximately 0.5 mile south of the intersection of U.S. Highway 79 and Farm-to-Market Road 486 in Milam County, Texas.

City of Orchard has applied for a renewal of TPDES Permit No. WQ0011545001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 4,000 feet southeast of the intersection of State Highway 36 and Farm-to-Market Road 1489, approximately 3,500 feet southwest of the City of Orchard in Fort Bend County, Texas.

U.S. Silica Company, which operates the U.S. Silica - Kosse Plant, a kaolin clay mining and processing facility has applied for a renewal of TPDES Permit No. WQ0001176000, which authorizes the discharge of process generated water, area runoff, and water from mine area dewatering at a daily maximum discharge not to exceed 2,500,000 gallons per day via Outfalls 001, 002, 003, 004, 005. The total combined daily maximum flow from the five outfalls shall not exceed 4,000,000 gallons per day. The facility is located on the east side of Farm-to-Market Road 2749, approximately one mile north of the intersection of State Highway 7 and Farm-to-Market Road 2749, and approximately 7.5 miles north of the City of Kosse, Limestone County, Texas.

West Yukon Estates LLC has applied for a renewal of TPDES Permit No. WQ0012612001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located at 2719 Third Street, approximately 4,000 feet northeast of the intersection of Farm-to-Market Road 1960 and Farm-to-Market Road 2100, northeast of the incorporated township of Huffman in Harris County, Texas.

The Center Serving Persons with Mental Retardation has applied for a renewal of TPDES Permit No. WQ0013466001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. TCEQ received this application on November 21, 2008. The facility is located four miles north of the intersection of Interstate Highway 10 and Farm-to-Market Road 1458, on Farm-to-Market Road 3318 in Waller County, Texas.

Iowa Colony Sterling Lakes, Ltd. has applied for a renewal of TPDES Permit No. WQ0014546001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located approximately 5,000 feet west of State Highway 288, approximately 750 feet north of County Road 57 in Brazoria County, Texas.

J. West Development, Inc. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014916001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies. The facility will be located 4,000 feet northeast of the intersection in the community of Matagorda where US Highway 60 makes a 90 degree turn in Matagorda County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200901129
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2009

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Notice of Water Rights Application

Notice issued March 10, 2009

APPLICATION NO. 5703A; Luminant Mining Company LLC, Applicant, 500 N. Akard Street, LP 12-085, Dallas, TX 75201, has applied for an amendment to Water Use Permit No. 5703 to authorize two existing sediment control reservoirs, add two new diversion points and to authorize subsequent diversion and use of all or part of the 680 acre-feet of water currently authorized by Water Use Permit No. 5703, from unnamed tributaries of Cass Branch, Sabine River Basin, for mining purposes in Rusk County. More information on the application and how to participate in the permitting process is given below. The application and partial fees were received on July 21, 2008. Additional information and fees were received on October 23, November 3, and November 24, 2008. The application was accepted for filing and declared administratively complete on December 9, 2008. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200901130
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 18, 2009

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Request for Nominations - Water Utility Operator Licensing Advisory Committee

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for six individuals to serve on the TCEQ Water Utility Operator Licensing Advisory Committee (the Committee). The Committee membership represents various geographic areas of the state, ethnicity, businesses, governments, associations, and industries. If you have served on this advisory committee or nominated someone or self-nominated in the past, you may do so again. When members' terms expire, the committee representation changes and individuals with varying backgrounds and geographic locations are needed each time.

The authority for the committee is found in Title 30 TAC Chapter 5. The objectives of the 13-member committee are: 1) to review training and educational material to promote quality education and training; 2) to review Job Analysis exam validations and to advise and assist regarding licensing requirements; 3) to assist with the review of rules, regulations, guidance documents, and policy statements; 4) to represent a diversity of viewpoints; 5) and to promote interaction with outside organizations.

These six appointments will be made by the TCEQ commissioners and will be for four-year terms, beginning September 1, 2010. The committee meets as needed, usually four times a year. Meetings are held at the TCEQ offices located at 12100 Park 35 Circle in Austin, Texas, and last approximately two - four hours. No financial compensation is available. Additional information regarding the Committee is available at the following web site: *http://www.tceq.state.tx.us/compliance/compliance_support/licensing/wuoc_comm.html*.

To nominate an individual or to self-nominate, submit a resume of the nominee. The resume must include: work history, dates of employment, job titles and duties, educational background, professional licenses held, and dates of past and current memberships on TCEQ advisory committees, councils and work groups. Also, submit a letter from the nominee indicating his/her agreement to serve, if appointed, and indicating that he/she has employer approval to serve, if required. *Nominations must be received at TCEQ by 5:00 p.m., on April 30, 2009*. Nominations may be mailed to Allan Vargas, Compliance Support Division, MC 178, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. Nominations may also be faxed to Mr. Vargas at (512) 239-6272 or sent by email to alvargas@tceq.state.tx.us.

Questions regarding the committee can be directed to Mr. Vargas at (512) 239-6139 or to Sarita Nazareth at (512) 239-6189.

TRD-200901103
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 17, 2009

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective April 1, 2009.

The amendment will modify the reimbursement methodology for clinical laboratory services in the Texas Medicaid State Plan as a result of Medicaid fee changes.

The proposed amendment is estimated to result in a reduced annual aggregate expenditure of $4,848,518 for the remainder of federal fiscal year (FFY) 2009, with approximately $2,886,323 in federal funds and

$1,962,195 in state funds. For FFY 2010, the estimated additional aggregate expenditure is $12,483,386, with approximately $7,338,983 in federal funds and $5,144,403 in state funds. For FFY 2011, the estimated additional aggregate expenditure is $13,399,691, with approximately $7,897,778 in federal funds and $5,501,913 in state funds.

Interested parties may obtain copies of the proposed amendment by contacting Chris Dockal, Hospital Reimbursement, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1467; by facsimile at (512) 491-1998; or by e-mail at chris.dockal@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200901055
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 12, 2009

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Public Notice

Adopted Rate. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopted the following interim per diem reimbursement rate for small, state-operated Intermediate Care Facilities for Persons with Mental Retardation, including facilities operated by the Texas Department of Aging and Disability Services: $394.49. The adopted rate is effective September 1, 2008.

Hearing. HHSC conducted a hearing on January 30, 2009, to receive public comment on the proposed reimbursement rate. The hearing was held in accordance with 1 Texas Administrative Code (TAC) §355.105(g), which requires that public hearings be held on proposed reimbursement rates before such rates are approved by HHSC. Notice of the hearing was published in the January 16, 2009, issue of the *Texas Register* (34 TexReg 361). No persons attended the hearing or provided written or oral comments.

Methodology and Justification. The adopted rate was determined in accordance with the rate setting methodology codified at 1 TAC §355.456(e), relating to Reimbursement Rates.

TRD-200901068
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 13, 2009

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective April 1, 2009.

HHSC was directed by Senate Bill 24 and Senate Bill 760, 80th Legislature, Regular Session, 2007, to expand telemedicine services to include office visits, establish a mechanism for reimbursing services provided at the patient site, change the telemedicine terminology to align more closely with Medicare, and encourage the use of telemedicine. The purpose of the proposed amendment is to clarify telemedicine services in the Texas Medicaid State Plan, expand allowable telemedicine services, and modify the reimbursement methodology to include reimbursement of a facility fee payable to the patient site location.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $261,360 for the remainder of federal fiscal year (FFY) 2009 (January 1, 2008, to September 30, 2008), consisting of $155,588 in federal funds and $105,772 in state general revenue. For FFY 2010, the estimated additional annual expenditure is $285,928 consisting of $167,725 in federal funds and $118,203 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Nancy Kimble by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1363; by facsimile at (512) 491-1998; or by e-mail at nancy.kimble@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200901070
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 13, 2009

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Texas Department of Housing and Community Affairs

Texas Neighborhood Stabilization Program Notice of Funding Availability (NOFA)

(1) Summary.

(a) The Texas Department of Housing and Community Affairs ("TDHCA" or the "Department") announces the expected distribution and use of $101,996,848 (amount includes all administrative funds (refer to Figure 1)) through the newly-authorized Neighborhood Stabilization Program ("NSP"), which the U.S. Department of Housing and Urban Development ("HUD") is providing to the State of Texas. The NSP funds were authorized by the Housing and Economic Recovery Act of 2008 ("HERA") as an adjunct to the Community Development Block Grant (CDBG) Program for the redevelopment of abandoned and foreclosed homes and residential properties. A Substantial Amendment ("Amendment") to the Action Plan for FFY 2008 was submitted by the State of Texas to HUD in order to update the Consolidated Plan for FFY 2005 - 2009 for the Texas Neighborhood Stabilization Program requirements. The Amendment was approved by HUD on January 30, 2009.

(b) The availability and use of these funds is subject to the Community Development Block Grant regulations (24 CFR Part 570), as applicable, the federal HOME Investment Partnerships Program (HOME) regulations (24 CFR Part 92), as applicable, and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR Part 58 for environmental requirements, 24 CFR Parts 84 and 85, as applicable, for such issues as procurement and conflict of interest, and 24 CFR Parts 100 - 115 for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules and program guidelines that govern the program.

(2) Allocation of Texas NSP Funds.

(a) These funds will be distributed in partnership with the Office of Rural Community Affairs ("ORCA") and the Texas State Affordable Housing Corporation ("TSAHC"). A Memorandum of Understanding

(MOU) will be executed between TDHCA and ORCA to outline the responsibilities and parameters of the partnership. A contract will be executed between TDHCA and TSAHC to establish a statewide land bank for the Texas NSP. TDHCA will coordinate activities in accordance with NSP guidelines including the establishment of financing mechanisms for purchase and redevelopment of foreclosed homes and residential properties, purchase and rehabilitation of homes and residential properties that have been abandoned or foreclosed, establishment of land bank/trusts, removal of blight, and the redevelopment of demolished or vacant properties. Households directly assisted with NSP funds must income qualify and be at or below 120% of the Area Median Income (AMI), as defined by HUD.

(b) Texas NSP funding is available to eligible entities operating in counties meeting the threshold of greatest need, as defined by the State in the Amendment to the Action Plan. A multi-level approach will be used in the distribution of funds to communities. The first level, Direct Allocation, is a reservation of a specified amount available to eligible entities in 25 counties identified as having the highest order of significant need. The second level, Select Pool, is an initial competitive allocation of not less than $500,000, available to entities in up to 76 additional counties which have also been identified as demonstrating significant need. In addition, a separate pool of Texas NSP funds is available for land banking activities; TDHCA will administer land bank activities in conjunction with the Texas State Affordable Housing Corporation ("TSAHC"). The following table summarizes the program distribution of Texas NSP funds:

Figure 1. Program Distribution of Texas NSP Funds.

Direct Allocation	$ 50,692,337
Select Pool	$ 31,104,826
Land Banking	$ 10,000,000
Administration (10% combines state and contracting entity)	$ 10,199,685
Total Texas NSP Allocation	$101,996,848

(3) Definitions.

As stipulated in the *Federal Register* Notice (Docket No. FR-5255-N-01) for the NSP, there are certain terms used in HERA that are not used in the regular CDBG program. Certain terms may be used differently in HERA and in the Housing and Community Development Act of 1974, as amended. When in conflict, definitions published in the *Federal Register* (Docket No. FR-5255-N-01) and any subsequent HUD Errata Notice are controlling for the Texas NSP.

(4) Limitations on Funds.

(a) In order to avoid allocating small amounts of funding that can have no meaningful impact on stabilizing of property values, the minimum award amount to an eligible entity cannot be less than $500,000, excluding Administration costs.

(b) Before the effective date of the Texas NSP Contract, an eligible entity that ultimately receives an award of Texas NSP funds, (Contract Administrator) may incur and be reimbursed for travel costs, as provided for with Administration funds, related to implementation training required by the Department as a condition of receiving an NSP award and Contract.

(c) Department-authorized pre-award costs for predevelopment activities, including but not limited to legal, architectural, engineering, appraisal, surveying, environmental, and market study fees, may be reimbursed if incurred before the effective date of a Contract so long as the costs are in accordance with 24 CFR §§570.205 - 206 and 24 CFR Part 58 and at the sole discretion of the Department.

(d) Additional limitations as defined in HERA and HUD NSP Notices regarding purchases, rehabilitation, and sale of homes, will be strictly enforced.

(e) The Department may develop and enforce additional contract management benchmarks to ensure the proportionate use of funds to meet the federal mandates regarding serving households earning not more than 50% of AMI, discounts on acquisitions and timely use of funds.

(5) Administrative and Activity Delivery/Soft Costs Limitations.

(a) Each applicant that is awarded NSP funds may also be eligible to receive funding for administrative costs. The award amount for the Administration line item shall not exceed 5% of the contract amount for all activities except Land Bank activities. Administrative costs for Land Bank activities will be limited to a total of 8%, of which 2% will be reserved for long-term oversight by the Department or its designee. These figures do not include Activity delivery costs described below The administrator must use funds for all administrative costs in accordance with 24 CFR §§570.205 - 206, and Office of Management and Budget (OMB) Circulars A-87, A-122, A-102 and A-110, as applicable.

(b) Activity Delivery costs represent the administrative costs incurred in implementing specific activities but are separate from the general administrative costs, for which limits are set forth in the previous paragraph. The Texas NSP limits Activity Delivery costs according to activity as specifically described in program activity sections.

(c) Soft costs are a type of Activity Delivery costs that are directly related to and identified with a specific housing unit (property). Eligible project-related soft costs must be reasonable and consistent with industry norms. Specific eligible activities include:

(A) preparation of work write-ups, work specifications, and cost estimates;

(B) architectural, engineering or professional services required to prepare plans, drawings or specifications directly attributable to a particular project;

(C) inspections for lead-based paint, asbestos, termites or septic systems;

(D) interim and final inspections by the construction inspector;

(E) financing fees, credit reports, title binders and insurance;

(F) recordation fees, transaction taxes;

(G) legal and accounting fees;

(H) appraisal fees;

(I) architectural and engineering fees, including specifications and job progress inspections;

(J) relocation costs;

(K) site specific environmental reviews; and

(L) lead hazard evaluation and reduction costs.

(d) For all activities, Activity Delivery costs must be reasonable and consistent with industry norms and will be restricted to a percentage of the non-administrative NSP costs per housing unit or property. The related Activity Delivery costs maximum will be based on the activity in a range from 5% to no more than 20% of the non-administrative NSP costs per housing unit or property.

(e) Activity Delivery costs may not exceed the foregoing limits without prior written approval by the Department. Upon prior approval of the Department, exceptions may be allowed in the case of Rehabilitation activities for lead-based paint hazard reduction and/or relocation and cost categories not identified in the Texas NSP NOFA.

(f) Contract Administrators must certify that the amount being disbursed is for the actual amount of costs, including Administrative and Activity Delivery costs, and must provide documentation to support such costs.

(g) Eligible Costs are limited to those listed in §570, Subpart C, or as otherwise identified in the NSP *Federal Register* Notice. No duplicate disbursement of costs is allowed. Costs may only be disbursed as either a project Activity Delivery cost or Administration cost but not both. Additionally, costs may only be disbursed once per occurrence when providing both acquisition and construction assistance to the same Project or Activity.

(6) Eligible and Prohibited Activities.

(a) The use of NSP grant funds must constitute an Eligible Use under HERA. Most of the activities eligible in NSP represent a subset of the eligible activities under 42 U.S.C. §5305(a). The NSP Eligible Uses must be correlated with CDBG-eligible activities. See §8 of the NOFA for a complete listing of eligible activities and uses.

(b) Prohibited activities include, but are not limited to:

(A) The payment of delinquent taxes, fees, or charges on properties to be assisted with NSP funds;

(B) The payment of any cost that is not eligible under 24 CFR §§570.201 - 570.206;

(C) Assistance to persons who owe payments identified by the Comptroller of Texas as relevant (including, but not limited to, child support, student loans, and delinquent taxes);

(D) Assistance to any household whose property has current tax liens against it and/or judgments liens in favor of the State of Texas against it; or

(E) The provision of rehabilitation on a housing unit without prior written consent of all persons who have any lien or ownership interest in the property, whether of record or not, unless exempted by state law.

(7) Eligible and Ineligible Applicants.

(a) Eligible applicants are Units of General Local Government and nonprofit organizations. Nonprofit organizations must secure a letter from an eligible city or county granting the nonprofit organization the authority to apply on their behalf.

(b) Direct Pool: Based on the county need score, eligible entities within the following 25 counties may submit an application to receive allocations from the Direct Pool: Bell; Bexar; Brazoria; Cameron; Collin; Dallas; Denton; Ector; El Paso; Fort Bend; Galveston; Harris; Hidalgo; Jefferson; Lubbock; McLennan; Montgomery; Nueces; Potter; Tarrant; Taylor; Travis; Webb; Wichita; and Williamson.

(c) Select Pool: Based on the county need score, eligible entities within the following 76 counties may submit an application to receive allocations from the Select Pool: Anderson; Angelina; Aransas; Atascosa; Austin; Bastrop; Bowie; Brazos; Brown; Burnet; Caldwell; Cherokee; Comal; Cooke; Coryell; Eastland; Ellis; Erath; Fannin; Gillespie; Gonzales; Grayson; Gregg; Grimes; Guadalupe; Hale; Harrison; Hays; Henderson; Hill; Hood; Hopkins; Howard; Hunt; Jackson Jasper; Jim Wells; Johnson; Kaufman; Kendall; Kerr; Kleberg; Lamar; Leon; Liberty; Llano; Matagorda; Maverick; Medina; Midland; Milam; Montague; Nacogdoches; Navarro; Orange; Palo Pinto; Parker; Polk; Randall; Rockwall; San Patricio; Smith; Starr; Tom Green; Upshur; Val Verde; Van Zandt; Victoria; Walker; Waller; Washington; Wharton; Willacy; Wilson; Wise; and Wood.

(d) The following violations will cause an Applicant and/or any Applications they have submitted to be ineligible:

(A) The Applicant is an Administrator of a previously funded Contract for which Department funds have been partially or fully deobligated due to failure to meet contractual obligations during the twelve (12) months prior to application submission date; an exception may be made at the discretion of the Department if the deobligation was voluntary, part of project close-out or the remainder was completed on a subsequent Contract;

(B) The Applicant has failed, (within the reasonable time allotted for response), to submit a response to provide an explanation, evidence of corrective action or a payment of disallowed costs or fees as a result of a monitoring review;

(C) The Applicant has failed to make timely payment or is delinquent on any loans or fee commitments made with the Department on the date of the Application submission;

(D) The Applicant has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs or has otherwise been debarred by HUD or the Department;

(E) The Applicant has violated the State laws regarding ethics, including revolving door policy;

(F) The Applicant has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen years preceding the Application deadline;

(G) The Applicant at the time of Application submission is subject to the following for which proceedings have become final:

(i) an enforcement or disciplinary action under state or federal securities law or by the NASD;

(ii) a federal tax lien;

(iii) or is the subject of an enforcement proceeding with any governmental entity.

(H) The submitted Application has excessive omissions of documentation from the Selection Criteria; or is so unclear, disjointed, or incomplete, as determined by the Department, that a thorough review cannot reasonably be performed. If an Application is determined ineligible pursuant to this section, the Application will be terminated without the opportunity for corrections of administrative deficiencies.

(I) The Applicant or anyone that has controlling 51% ownership interest in the development owner or developer that is active in the owner-

ship or control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the Land Use Restriction Agreement (LURA) (10 TAC §60.121); and

(J) Any Application that includes financial participation by a Person who, during the five-year period preceding the date of the bid or award, has been convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or Reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 25, 2005, or was assessed a federal civil or administrative penalty in relation to such a contract.

(8) Program Activities.

(a) Financing Mechanisms.

Activity Type: "NSP Eligible Use (A) Establish finance mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties."

CDBG Eligible Activities: 24 CFR §570.206 Activity delivery costs; also, the eligible activities listed here to the extent financing mechanisms are used to carry them out: 24 CFR §570.201(a) Acquisition, (b) Disposition, (n) Homeownership Assistance; and 24 CFR §570.202 Rehabilitation.

(A) This activity will provide affordable ownership and rental opportunities by providing financing mechanisms to a subgrantee, developer or individual homebuyer to purchase or facilitate the purchase of foreclosed homes or residential property.

(B) Permanent Financing: Households earning 50% or less AMI may obtain up to 100% Mortgage Financing directly from the Department to purchase a foreclosed single-family house or residential property. This property must be the primary residence within thirty (30) days of closing the mortgage loan (or completion of rehabilitation to the extent that rehabilitation is combined with available financing mechanisms). Mortgage loans will be for thirty (30) years with a 0% interest rate. Fully amortizing scheduled repayment will be as set forth in loan documents executed at loan closing. Closing costs may be financed with the loan proceeds up to a loan to value ratio of 100%. Mortgage documents (Promissory Note and Deed of Trust) will be utilized to provide security for the repayment of the loan with stated rights and remedies in the event of default. A down payment of $500 will be required from all homebuyers receiving Permanent Financing through the Texas NSP. Qualifying households will be allowed to participate in a self-help housing program, at the approval and discretion of the Department, through which a minimum number of self-help construction hours, to be specified through contract, will be allowed to substitute as "sweat equity" for the $500 down payment requirement.

(C) Homebuyer Assistance: Homebuyers who qualify as 51-120% AMI will be eligible to access Texas NSP funds for down payment assistance, reasonable closing costs, principal reductions, and gap financing in an amount needed to qualify for private mortgage financing, but not to exceed $30,000. Households earning 50% or less AMI will also be eligible for principal reductions and gap financing in an amount needed to qualify for 100% financing through the Texas NSP, but not to exceed $30,000. Homebuyer Assistance will be in the form of a deferred forgivable loan contingent upon the total amount of assistance, creating a 2nd or 3rd lien with a term based on the federal affordability requirements as referenced in Section 9 of the NOFA.

(D) Subgrantee Financing: The acquisition of foreclosed single-family and multifamily residential properties by subgrantees and developers will be funded through a loan with the Department. These loans will not be considered a "financing mechanism" for the purposes of the Texas NSP. The loan to the subgrantee or developer may be transferred to the qualifying homebuyer and converted to a thirty-year amortizing loan through the Department with 0% interest for households earning 50% or less AMI. Homebuyer Assistance will also be available through the Department for qualifying households in the same manner as described in the above paragraph to facilitate private financing and repayment of the acquisition loan from the Department.

(E) Rental (Single-family and Multifamily) Residential Property Financing: The acquisition of foreclosed single-family and multifamily residential properties by subgrantees and developers for rental opportunities will be funded through a loan with the Department. The loan to the subgrantee or developer may be converted to a thirty-year amortizing loan through the Department with 0% interest for the percentage of units designated for households earning 50% or less AMI; i.e. if 60% of the units of a foreclosed apartment complex to be acquired will be filled with households earning 50% or less AMI, then 60% of the acquisition loan may be converted to a thirty-year amortizing loan through the Department with 0% interest. The remaining 40% of the acquisition loan must be repaid to the Department. Homebuyer Assistance is unavailable for rental properties. Further detail of loan requirements is discussed in §10 of the NOFA. Texas NSP continued affordability requirements as referenced in §9 of the NOFA will apply.

(F) Acquisition: Appraisals that conform to the requirements of the URA at 49 CFR §24.103 will be required for the purposes of determining the statutory purchase discount. The appraisal must be completed within 60 days prior to the final offer made for the property by a subgrantee, developer or individual homebuyer. An individual property may be purchased at as little as a 5% discount; however the portfolio of properties acquired by each contract administrator must reflect an overall 15% discount from current appraised values.

(G) Eligible and Ineligible Property: Eligible property types for assistance under this activity are limited to single-family homes and residential property (property intended for residential purposes, i.e. zoned residential or where there is no zoning, residential use is consistent with deed restrictions and any other limiting factors) including condominium units, apartment units, cooperative units in mutual housing projects and multifamily residential property.

(H) Repayment: The loans are to be repaid (if any of the following occurs before the end of the loan term): resale of the property; refinance of the first lien; repayment of first lien or if the unit ceases to be the assisted household's principal residence. The amount of recapture will be based upon the recapture provision at 24 CFR §92.254(a)(5)(ii), summarized as follows:

(i) Recapture of the amount of the NSP investment is reduced on a *pro rata* share based on the time the homeowner has owned and occupied the unit measured against the required affordability period. The recapture amount is subject to available shared net proceeds in the event of sale or foreclosure of the housing unit.

(ii) In the event of sale or foreclosure of the housing unit, if the shared net proceeds (i.e., the sales price minus closing costs; any other necessary transaction costs; and superior lien loan repayment,) are in excess of the amount of the NSP investment that is subject to recapture, then the net proceeds may be divided proportionately between repayment of NSP loan(s) and the homeowner as set forth in the following mathematical formula: (NSP investment / (NSP investment + homeowner investment)) X net proceeds = NSP amount to be recaptured

(I) Restrictions: The following first lien purchase loan requirements are imposed for households receiving homebuyer assistance:

(i) No adjustable rate mortgage loans (ARMs) or interest rate buy-down loans are allowed;

(ii) No mortgages with a loan to value equal to or greater than 100% are allowed;

(iii) No subprime Mortgage Loans are allowed;

(iv) Lenders must require the escrow of taxes and insurance;

(v) An origination fee and any other fees associated with the mortgage loan may not exceed 2% of the loan amount; and

(vi) The debt to income ratio (back-end ratio), as defined in Fannie/Freddie conventional loan underwriting guidelines, may not exceed 45%.

(J) Homebuyer Counseling: All NSP-assisted homebuyers will be required to complete at least eight (8) hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan. Evidence must include documentation describing the level of homebuyer counseling, including post purchase counseling. Applicant must state who will provide the homebuyer counseling and must submit a copy of the curriculum. A proposed written agreement for service provider (if the applicant is not providing the service) must also be provided.

(K) Income Targeting: Benefits low, moderate and middle-income persons as defined in the NSP Notice (≤120% of area median income). As required in the Amendment, at least 35% of the non-administrative allocation should be targeted to benefit households with incomes less than or equal to 50% AMI.

(L) Program Income: Any program income received from financing mechanisms utilizing Texas NSP funds, including principal payments from 0% financing, must be returned to the Department. Revenue received by a private individual or other entity as a result of a financing mechanism involving NSP funds must also be returned to the Department.

(M) Benchmarks:

(i) Three (3) months:

(I) Environmental Assessment complete and submitted to Department for review.

(ii) Six (6) months:

(I) All properties/households identified.

(II) For all properties to be purchased, earnest money contracts or options to purchase must have been executed to meet HERA requirement of obligation. Earnest money or option contracts must include the contingency of final environmental clearance prior to purchase (if environmental clearance and authority to use grant funds not already issued).

(iii) Twelve (12) months:

(I) Homebuyer counseling requirement met for all NSP-assisted homebuyers.

(II) All loans closed.

(N) Activity Delivery Cost Limits: Activity Delivery costs for all financing mechanisms will be limited to 10% of the NSP non-administrative costs per housing unit or property.

(b) Acquisition of Real Property (Purchase and Rehabilitation).

Activity Type: "NSP Eligible Use (B) Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent or redevelop such homes and properties."

CDBG Eligible Activities: 24 CFR §570.201(a) Acquisition, (b) Disposition; and 24 CFR §570.202 Rehabilitation.

(A) To implement this activity, Applicants will purchase residential properties that have been abandoned or foreclosed at a discount to ensure purchasers are paying below-market value for the property. Appraisals that conform to the requirements of the URA at 49 CFR §24.103 will be required for the purposes of determining the statutory purchase discount. The appraisal must be completed within sixty (60) days prior to the final offer made for the property by a subgrantee or developer. The acquisition of abandoned property may be funded if the property has been vacant for at least ninety (90) days and payments on the mortgage or taxes have not been made for at least ninety (90) days. Any individual property may be acquired at a 5% discount; however, any portfolio of properties must collectively reflect a 15% discount from current market values.

(B) Acquired homes and residential properties must be rehabilitated and made available for sale or rent to eligible households within twelve (12) months of acquisition.

(C) The acquisition and subsequent rehabilitation, reconstruction or redevelopment of residential properties will be funded through a loan with the Department. A subgrantee or developer that has acquired and rehabilitated homes and residential properties through Texas NSP funds may repay the Department when private financing is secured by a qualifying homebuyer. If the property is eligible for Financing Mechanisms (foreclosed home or residential property), then the homebuyers may qualify for the Homebuyer Assistance available under that activity. A subgrantee or developer may also utilize Permanent Financing through the Department if the property is eligible and the homebuyers qualify under the activity of Financing Mechanisms. The loan will be transferred to the homebuyer and converted to a thirty-year amortizing loan with 0% interest for qualifying homebuyers.

(D) Rehabilitation includes activities and related costs as described in 24 CFR §570.202(b), but limited to the improvement or modification of an existing residential property through an alteration, addition, or enhancement including the demolition of an existing residential property and the reconstruction (rebuilding of a structure on the same site in substantially the same manner) of residential property.

(E) Rehabilitated residential property must result in permanent housing.

(F) Eligible property types for rehabilitation are limited to single family dwellings, condominium units and cooperative units in mutual housing projects. A Manufactured Housing Unit is not an eligible property type for Rehabilitation. NSP funds may be used to replace (Reconstruct) a housing unit with a new MHU or Modular Home if:

(i) The unit complies with the Texas Manufactured Housing Standards Act under Chapter 1201, Texas Occupation Code;

(ii) The unit is permanently installed in accordance with the Texas Manufactured Housing Standards Act;

(iii) The unit is permanently attached to utilities; and

(iv) The ownership of the unit is recorded in the taxing authority of the county in which it is located.

(G) Texas NSP loans will be required to be repaid to the Department within twelve (12) months of acquisition unless maintained as rental property (single-family or multifamily) under program requirements.

(H) Income Targeting: Benefit to low, moderate and middle income persons as defined in the NSP Notice (≤120% of area median income). As required in the Amendment, at least 35% of the non-administrative allocation should be targeted to benefit households with incomes less than or equal to 50% AMI.

(I) Activity Delivery Costs: Administrative costs directly associated with the activity of acquisition are limited to 15% of the hard costs required to acquire the property.

(J) Program Income: Any program income generated through the Acquisition and Rehabilitation activity must be returned to the Department.

(K) Benchmarks: The performance under the contract will be evaluated according to the following benchmarks counting from the start date of the contract with the Department:

(i) Three (3) months:

(I) Environmental assessment complete and submitted to Department for review.

(ii) Six (6) months:

(I) Properties identified and earnest money contracts have been initiated pending site-specific environmental clearance.

(iii) Twelve (12) months:

(I) Homebuyer counseling requirement met for all NSP-assisted homebuyers.

(II) All loans closed.

(iv) Twenty-four (24) months:

(I) Properties resold and 100% repayment made to the NSP.

(L) Activity Delivery Cost Limits: Activity Delivery costs for acquisition only will be limited to 15% of the NSP non-administrative costs per housing unit or property however acquisition with rehabilitation will be limited to 20% of the NSP non-administrative costs per housing unit or property.

(c) Land Bank. A land bank is a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, manage temporarily, and dispose of properties for the purpose of stabilizing neighborhoods and encouraging reuse or redevelopment of the properties.

Activity Type: "NSP Eligible Use (C) Establish land banks for home and residential properties that have been foreclosed upon."

CDBG Eligible Activities: 24 CFR §570.201(a) Acquisition, and (b) Disposition.

(A) The Department shall accept applications under this NOFA from qualified Applicants to establish local land banks to assemble, manage temporarily, and dispose of home and residential properties that have been foreclosed upon. HUD has limited the types of properties that may be acquired using land bank funding in the following manner:

(i) Properties must be located within an area with an AMI of 120% or less;

(ii) Acquired properties must have been foreclosed upon through a legal proceeding under Texas state law, which includes, but is not limited to tax foreclosures and financial foreclosures;

(iii) Properties to be acquired must be located within a defined service area, as defined by the Applicant according to the requirements in the Texas NSP Application;

(iv) Vacant land may not be acquired. Properties to be acquired must have a foreclosed upon home; however, it is permissible for acquired homes to be subsequently demolished and remain in the land bank.

(B) Land bank funding may only be used to acquire and dispose of eligible properties. NSP funds may also be used for basic, reasonable maintenance intended to stabilize the property and for the temporary management of the property which includes maintenance, assembly facilitating the redevelopment of and marketing of land banked properties. If the land bank is a governmental entity, it may also maintain foreclosed property that it does not own provided that it charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service.

(C) For the purposes of land bank activities in the NSP, a land back acquires foreclosed properties that do not have a designated specific, eligible redevelopment use in accordance with NSP requirements. However, simply holding property off of the local real estate market is not considered sufficient to stabilize most neighborhoods. Therefore, an NSP land bank may only hold the property up to ten years before it obligates (commits through a contract) the property to an eligible NSP use.

(D) TSAHC NOFA: The Department shall contract with the Texas State Affordable Housing Corporation (the "TSAHC") to administer approximately $5 million to establish and operate a statewide affordable housing land bank. The TSAHC land bank will provide a unique opportunity for eligible entities that have identified land banking as an NSP Eligible Use to stem the decline of residential property values in their communities but lack the capacity or desire to administer a land bank on their own in a contractual relationship with the Department. TSAHC will release a Request for Proposals (RFP) after the publication of this NOFA and after a grant agreement with the Department has been executed.

(i) The TSHCA RFP will be open to units of local government and qualified nonprofit organizations on a renewable cycle allowing applicants to apply and be awarded partnership agreements based on a first-come, first-qualified basis.

(ii) TSHAC will also oversee the development and provision of training and technical assistance activities to Applicants under this NOFA that apply for land bank funding directly from the Department. All training and technical assistance will be provided to Applicants free of charge.

(E) Program Income: Any program income received from land banking activities utilizing Texas NSP funds must be returned to the Department. Revenue received by a private individual or other entity as a result of land banking involving NSP funds must also be returned to the Department.

(F) Benchmarks: In accordance with HERA, the contract term for the Land Bank Program Activity shall not exceed ten (10) years, or until all land bank properties have been redeveloped in accordance with NSP requirements. Performance under the contract will be evaluated according to the following benchmarks:

(i) Three (3) months:

(I) Environmental Assessment complete and submitted to Department for review.

(ii) Six (6) months:

(I) Properties identified and earnest money contracts have been initiated pending site-specific environmental clearance.

(iii) Twelve (12) months:

(I) All loans closed for acquired properties.

(iv) Ten (10) years:

(I) Properties resold and 100% repayment made to the NSP.

(G) Activity Delivery Cost Limits: Activity Delivery costs for Land Bank will be limited to 20% of the NSP non-administrative costs per housing unit or property.

(d) Clearance (Removal of Blight or Demolition).

Activity Type: "NSP Eligible Use (D) Demolish Blighted Structures."

CDBG Eligible Activity: 24 CFR 570.201(d) Clearance of blighted structures only.

(A) As defined in the Amendment, this activity is anticipated to be used on a limited basis to address urbanized areas of greatest need where subrecipients can prove that blighted structures are affecting property values in the area and pose a threat to human health, safety, and public welfare. This activity cannot be utilized to target the 25% requirement for 50% AMI, but may be used in conjunction with other eligible activities. This activity is funded as a grant.

(B) Income Targeting: Benefits areas with low, moderate and middle-income persons (LMMA) as defined in the NSP Notice (≤120% of area median income).

(C) Activity Delivery Costs: Administrative costs directly associated with the activity of clearance are limited to 5% of the hard costs required to carry out the activity.

(D) Benchmarks: The performance under the contract will be evaluated according to the following benchmarks counting from the start date of the contract with the Department:

(i) Three (3) months:

(I) Environmental Assessment complete and submitted to Department for review.

(ii) Six (6) months:

(I) All properties to be demolished must be under contract for clearance or acquisition (if property is to be acquired) pending site-specific environmental clearance (if tiering methodology is used).

(II) All properties set up in contract management system.

(iii) Eighteen (18) months:

(I) 100% of Clearance activity funds drawn.

(e) Redevelopment.

Activity Type: "NSP Eligible Use (E) Redevelop Demolished or Vacant Properties."

CDBG Eligible Activities: 24 CFR §570.201(a) Acquisition, (b) Disposition, (c) Public Facilities, (e) Public Services, (i) Relocation, and (n) Homeownership Assistance (restricted).

(A) Redevelopment of demolished or vacant properties will address areas of greatest need throughout the state wherever there are large amounts of demolished or vacant properties that are contributing to declining land values. "Vacant properties" includes both vacant land and properties with vacant structures on the land; however, the properties must have been previously improved. Undeveloped or "greenfield" sites may not be acquired under "Eligible Use (E)".

(B) Eligible redevelopment activities include the new construction of housing and building infrastructure and the redevelopment of property to be used as rental housing.

(C) Specific Requirements: Three-year redevelopment loans for up to 100% financing at 0% interest serving households earning 50% or below AMI.

(D) Income Targeting: Benefit to low, moderate and middle income persons as defined in the NSP Notice (≤120% of area median income). As required in the Amendment, at least 35% of the non-administrative allocation should be targeted to benefit households with incomes less than or equal to 50% AMI.

(E) Benchmarks:

(i) Three (3) months:

(I) Environmental assessment complete and submitted to Department for review.

(ii) Six (6) months:

(I) All properties/households identified.

(II) For all properties to be acquired, earnest money contracts must have been initiated to meet HERA requirement of obligation pending site-specific environmental clearance.

(iii) Twelve (12) months:

(I) Homebuyer counseling requirement met for all NSP-assisted homebuyers.

(II) All loans to households closed.

(vi) Twenty-four (24) months:

(I) Contract 100% drawn

(v) Thirty-six (36) months:

(I) Repayment of all redevelopment loans complete.

(F) Activity Delivery Cost Limits: Activity Delivery costs for Redevelopment will be limited to 20% of the NSP non-administrative costs per housing unit or property.

(G) Program Income: Any program income generated through the Redevelopment activity must be returned to the Department.

(9) Affordability Requirements.

(a) The Texas NSP will adopt the federal program standards for continued affordability for rental housing at 24 CFR §92.252. Continued affordability requirements may apply to rental activity as a result of the activities of Financing Mechanisms, Acquisition, Land Banking and/or Redevelopment.

Figure 2. Continuing Affordability of Texas NSP Funds.

Rental Housing Activity	Minimum Period of Affordability in Years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under $15,000	5
$15,000 to $40,000	10
Over $40,000 or rehabilitation involving refinancing	15
New construction or acquisition of newly constructed housing	20

(b) The Texas NSP will adopt the federal program standards for homeownership assistance at 24 CFR §92.254. Affordability periods will apply to any Homeownership Assistance as a result of the activities of Financing Mechanisms, Acquisition, Land Banking and/or Redevelopment.

Figure 3. Affordability Period of Texas NSP Funds.

Homeownership Assistance Amount Per-Unit	Minimum Period of Affordability in Years
Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15

(c) The subrecipient must ensure that the HOME requirements are enforceable for any NSP-assisted activities. (Note that the affordability standards dictated by HERA are longer than those under 24 CFR §570.503 and §570.501(b). HOME requirements reflect the minimum allowable standard).

(d) If NSP funds assist a property that was previously assisted with HOME funds, but on which the affordability restrictions were terminated through foreclosure or transfer in lieu of foreclosure pursuant to 24 CFR Part 92, the HOME affordability restrictions for the greater of the remaining period of HOME affordability or the continuing affordability requirements of this notice.

(10) Loan Requirements.

(a) Single-Family Homeownership Loan Requirements. The Texas NSP will follow the Single Family Mortgage limits set under the February 2008 edition of §203(b) of the National Housing Act. Eligible entities may, with written approval of the Department, utilize as a mortgage limit the most recent 95% of Actual Median Sales for each county as promulgated by HUD.

(A) The unit assisted must be the primary residence of the homebuyer. Awarded entities may provide the NSP assistance to the qualifying homebuyer in the form of a loan or forgivable loan as a financing mechanism discussed in §8(a). A down payment of $500 will be required from all homebuyers receiving Permanent Financing through the Texas NSP; however, qualifying households will be allowed to participate in a self-help housing program, at the approval and discretion of the Department, through which a minimum number of self-help construction hours, to be specified through contract, will be allowed to substitute as "sweat equity" for the $500 down payment requirement. Affordability terms will be based on the total amount of assistance provided and in accordance with 24 CFR §92.254.

(B) Each loan to an assisted homebuyer must be payable to the Department. Each construction loan for reconstruction or rehabilitation shall be evidenced by a construction loan agreement, note, deed of trust, mechanic's lien note, and mechanic's lien contract secured by the property. Loan documents will be provided by the Department and must be executed prior to the commencement of any construction activities (including site clearance/demolition when performed in conjunction with an NSP Eligible Use other than Demolition).

(C) Forgiveness of the loan balance is calculated based on a *pro rata* annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived.

The amount due will be based on the *pro rata* share number of years of the remaining loan term.

(D) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted Household's principal residence, the remaining loan balance shall become due and payable.

(E) Subrecipients must ensure that each NSP-assisted homebuyer who receives conventional financing from a third party obtains a mortgage loan from a lender who agrees to comply with the bank regulators' guidance for non-traditional mortgages (see, Statement on subprime Mortgage Lending issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Department of the Treasury, and National Credit Union Administration). NSP-assisted homebuyers may not receive subprime mortgage loans. Compliance must be documented in the records maintained for each homebuyer.

(F) If NSP funds assist a property that was previously assisted with HOME funds, but on which the affordability restrictions were terminated through foreclosure or transfer in lieu of foreclosure pursuant to 24 CFR Part 92, the HOME affordability restrictions for the greater of the remaining period of HOME affordability or the continuing affordability requirements of this notice.

(b) Multifamily Rental Development Loan Requirements. The Texas NSP will follow the maximum per-unit subsidy amount and subsidy layering allowable under the HOME Program using §221(d)(3) limits as defined at 24 CFR §92.250.

(A) At least 20% of the assisted development must benefit households with incomes at or below 120% AMI.

(B) Award amounts are limited to available funding as limited in the application process and respective applicant pool. The minimum award may not be less than $1,000 per NSP assisted unit. The Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a feasibility criterion a 1.15 debt coverage ratio minimum. Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing When NSP funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(C) When Department funds will have a first lien position and funds are used for new construction and/or rehabilitation, assurance of completion of the development in the form of payment and performance bonds in the full amount of the construction contract will be required. Such assurance of completion will run to the Department as obligee and must be documented prior to closing.

(D) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, prohibit the discrimination of renters using Section 8 Housing Choice Vouchers, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

(E) The Texas NSP will adopt the federal program standards for continued affordability for rental housing at 24 CFR §92.252, however, multifamily housing units may be required to adhere to a thirty-year affordability period as defined in the Texas Government Code §2306.185, which outlines State of Texas long-term affordability requirements. Units targeting households earning 50% of AMI must maintain income and rent restrictions for households at that level published by the Department.

(c) Documents Supporting Mortgage Loans.

(A) Contract Administrators must not proceed or allow a contractor to proceed with construction, including demolition, on any Activity, Project or Development without first completing the required environmental clearance procedures and Loan closing with the Department.

(B) A mortgage Loan shall be evidenced by a mortgage or deed of trust note or bond and by a mortgage that creates a lien on the housing development and on all real property that constitutes the site of or that relates to the housing development.

(C) For each Loan made for the Development of multifamily housing with funds provided to the state under the NSP program, the Department shall obtain a mortgagee's title policy in the amount of the loan. The Department may not designate a specific title insurance company to provide the mortgagee title policy or require the borrower to provide the policy from a specific title insurance company. The borrower shall select the title insurance company to close the loan and to provide the mortgagee title policy.

(D) A note or bond and a mortgage or deed of trust:

(i) must contain provisions satisfactory to the Department;

(ii) must be in a form satisfactory to the Department; and

(iii) may contain exculpatory provisions relieving the borrower or its principal from personal liability if the Department agrees.

(d) Documents Supporting Homebuyer Assistance and Rehabilitation Loans

(A) Documentation required for Homebuyer Assistance and Rehabilitation Loans. The Administrator must ensure the following documents are submitted to the Department in order to request that Loan documents be prepared for the Household:

(i) A title report or a commitment to issue a title policy not older than ninety (90) days that:

(I) evidences no tax lien, mechanic's or materialman's lien or any other restrictions or encumbrances that impair the good and marketable nature of title to the ownership interest. The title report must be a report of the property reflecting the current owner's deed vesting title, including complete deed information, grantees, grantors, execution and recording dates, recording references, and legal description, as well as all existing mortgage/deed of trust liens.

(ii) Tax certificate that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current; and

(iii) Within ninety (90) days after the Loan closing date, the Administrator or Developer must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ninety (90) days after the Loan closing date will result in the Department withholding payment for disbursement requests.

(11) Site and Construction/Development Restrictions.

(a) Single Family Housing

(A) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with NSP funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, the housing must meet the International Residential Code or Texas Minimum Construction Standards (TMCS), as applicable, and be

in compliance with the basic access standards in new construction, established by §2306.514, Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet all applicable energy efficiency standards established by §2306.187, Texas Government Code, and energy standards as verified by RESCHECK.

(B) If a Texas NSP assisted unit is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514, Texas Government Code, required for any applicant utilizing federal or state funds administered by TDHCA in the construction of single family homes.

(C) All other assistance (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the Housing Quality Standards in 24 CFR §982.401. When NSP funds are used for rehabilitation the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(b) Multifamily Rental Housing.

(A) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, NSP-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(B) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601-3619). Additionally, pursuant to the 2009 Qualified Allocation Plan (QAP), 10 TAC §49.9(h)(4)(H), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

(C) All of the current Qualified Allocation Plan and Real Estate Analysis Rules 10 TAC §49.6, excluding subsections (d), (f), (g), and (h) apply.

(D) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(E) Multifamily housing assisted with NSP funds must meet the accessibility requirements at 24 CFR, Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, and the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601-3619).

(F) All applications with multifamily housing units intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

(G) Rental units secured though Texas NSP assistance must be inspected prior to occupancy and must comply with Housing Quality Standards (HQS) established by HUD in 24 CFR Part 92.

(H) Multifamily properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

(c) Additional Requirements (Single and Multifamily Housing).

(A) NSP assisted new construction or rehabilitation will comply with federal lead-based paint requirements including lead screening in housing built before 1978 in accordance with 24 CFR §92.355 and 24 CFR Part 35, subparts A, B, J, K, M, and R.

(B) Davis-Bacon Labor Standards, as applicable.

(C) Affirmative Marketing. Recipients must adopt affirmative marketing policies and procedures in furtherance of Texas' commitment to non-discrimination and equal opportunity in housing. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, gender, religion, familial status or disability. Records should be maintained describing actions taken by the Administrator to affirmatively market units and assess the results of these actions.

(D) Administrators may not retain Program Income of any kind, including Program Income to fund other eligible NSP Activities and submit any Program Income received to the Department within ten (10) days of receipt. Note: Revenue for the purposes of HERA has the same meaning as program income, as defined at 24 CFR §570.500(a) with the additional modifications as defined in the *Federal Register* notice for NSP.

(12) Application Requirements.

(a) Direct Pool: To remain qualified for the reservation amount of a Direct Allocation, initial applications within each eligible county must be submitted within thirty (30) days of notification on the TDHCA web site that HUD has approved this Amendment. Failure to meet the deadline will result in the relinquishment of the reservation of funds. After the deadline, requests for amounts in excess of the identified Direct Allocation amount for each county will be considered based on the availability of remaining funds, on a first-come, first-served basis.

(b) Select Pool: To remain qualified for this pool of funding, initial applications within each eligible county must be submitted within thirty (30) days of notification on the TDHCA web site that HUD has approved the Amendment. The State will competitively award Select Pool funds based on the selection criteria defined in the activity described in this NOFA within thirty (30) days from the application dead-

line. Failure to meet the deadline will result in the relinquishment of eligibility. After the deadline, requests for amounts in excess of $500,000 for each county will be considered based on the availability of remaining funds and the score and ranking of the applicant's submission.

(c) Applicants may request more funding than initially reserved in this NOFA; however, the Department reserves the right to recommend those additional funds in accordance with Department processes, which may delay award. After the first thirty (30) days of the application period, all remaining reserved or unallocated funds in the NOFA will be made available to unfunded requests under Department review, by application pool. After one hundred and twenty (120) days after the opening of the application period, all remaining funds that have not been requested under the NOFA will be distributed by the Department in accordance with NSP federal program guidelines.

(d) Eligible applicants within the county should coordinate to ensure that their proposals consistently address the needs in their communities and do not duplicate the needs identified for each county. Duplication of requests for a county will delay the allocation agreement for a community and could result in a reduced amount of time available for applicants to contract for specific acquisitions. If needed, the State will allocate not less than $500,000 to multiple entities based on their proportionate need and the county's available direct allocation amount.

(e) Selection Criteria and Priorities: The State of Texas has established the priorities and scoring described below that will be used in the application review process. While the criteria are important to demonstrate a successful proposal, the scoring structure was designed to ensure that the State complies with the HUD Notice designed to prioritize areas of greatest need, meets applicable CDBG regulations, and effectively spends the funds:

(A) Maximum Total Score = 100 Points

(i) Greatest Need (50 Points)

(ii) Neighborhood Stabilization (20 Points)

(iii) Low-Income Households (20 Points)

(iv) Partnerships & Coordination (10 Points)

(B) Greatest Need (50 Points): The State will give priority to proposals that address the greatest need as represented on Exhibit 1; a higher Need Score indicates greater need. If an applicant has locally available, verifiable data that documents a greater need than established in the Amendment, it may be submitted. Controvertible date may include but is not limited to local data sources such as local financial institution data or local government records or a subset (smaller than county-level) of a national data source such as U.S. Postal Service data. Source documentation for all controvertible data is required. Certifications will be required for primary source data submissions. Finally, the controvertible data submission must calculate a higher score than the State's proposal by utilizing the formulas and methodology as published in the Amendment. The State will consult with HUD to determine whether the alternate data source is acceptable by HUD standards.

(C) Neighborhood Stabilization (20 Points): A narrative description that defines NSP-funded activities and meets the program's mission to alleviate distress of housing foreclosure and abandonment of properties caused by problematic mortgage lending activities. Priority will be given to applications which identify specific properties for eligible activities or provide a list of households to be assisted.

(D) Assistance to Low-Income Households at or Below 50% AMI (20 Points): In order to emphasize affordability for households at or below 50% of the area median income (AMI), the State will give priority to proposals that will serve persons in this income category beyond the Texas NSP minimum allocation wide requirement of 35% for non-land bank activities. Proposal scores will be prorated according to the additional percentage of funds that will benefit households at or below 50% AMI.

(E) Partnerships & Coordination (10 Points): The State will give priority to those applicants that demonstrate effective cooperation in addressing needs by providing evidence of capacity, communication and planning with other entities in the area to be served. This priority will include proposals submitted by city and county governments, nonprofits and regional efforts to efficiently manage NSP funds. The applicant must demonstrate a strong management role in the program delivery.

(f) Acquisitions & Relocation: It is estimated that most properties will be vacant, but previously improved, abandoned and foreclosed; it is not anticipated that relocation will occur. However, the Texas NSP will require adherence to the guidelines set forth in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24).

(g) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, acknowledgement of NSP as a reimbursement program, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If submission of a resolution is prohibitive at the time of application submission due to the time constraints of the NSP, a letter of intent from the chief elected official or the Chief Executive Officer of the applicant will suffice for the purposes of an application. A resolution conforming to the requirements herein will be required prior to contract execution.

(13) Review Process.

(a) Each application will be assigned a "received date" based on the date and time it is physically received by the Division. Then each application will be reviewed on its own merits, as applicable. Applications will continue to be prioritized for funding based on their competitive scoring or "received date", depending on allocation. Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

(b) The Department will ensure review of materials required under the NOFA and Program Guide and will issue a notice of any Administrative Deficiencies within ten (10) business days of the received date. Administrative deficiencies are omissions, inaccuracies or incomplete information on the application that can be readily corrected. Applications with Administrative Deficiencies not cured within a subsequent ten (10) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this phase will be reviewed for recommendation to the Board by the Selection Committee.

(c) If a submitted Application has an entire section of the application missing; has excessive omissions of documentation from the Selection Criteria or required documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated without being processed as an Administrative Deficiency. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant.

(d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications that are received, and may decide it is in the Department's best interest to

refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

(e) All Applicants will be processed through the Department's Application Evaluation System, and will include a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation or the recommendation may include conditions.

(f) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

(g) In accordance with §2306.082, Texas Government Code and 10 TAC §1.17, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

(h) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

(i) Eligible applicants within the county should coordinate to ensure that their proposals consistently address the needs in their communities and do not duplicate the needs identified for each county. Duplication of requests for a county will delay the allocation agreement for a community and could result in a reduced amount of time available for applicants to contract for specific acquisitions. In the application, applicants are required to identify:

(A) The geographic neighborhoods and communities targeted for Texas NSP funds within their jurisdiction;

(B) The Texas NSP eligible activities proposed to meet the specific needs in each area; and

(C) The strategy for maximum revitalization and impact of funds.

(14) Application Submission.

(a) All applications submitted for the Direct Pool under this NOFA must be received on or before 5:00 p.m. on Monday April 27, 2009, regardless of method of delivery.

(b) All applications submitted for the Select Pool under this NOFA must be received on or before 5:00 p.m. on Monday April 27, 2009, regardless of method of delivery.

(c) The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. Questions regarding this NOFA should be addressed to:

Texas Department of Housing and Community Affairs

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: robb.stevenson@tdhca.state.tx.us.

(d) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

(e) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy on a disc of the Application materials as detailed in the Program Guide. All scanned copies must be scanned in accordance with the guidance provided in the Program.

(f) All Application materials will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(g) This NOFA does not include text of the various applicable regulatory provisions that may be important to the NSP Program. For proper completion of the application, the Department strongly encourages potential applicants to review the State and Federal regulations, and contact the NSP Division for guidance and assistance.

(h) Application Workshop: the Department will present an application workshop in Austin, Texas on a date to be determined. The workshop will address information such as the Application preparation and submission requirements, evaluation criteria, state and federal program information, and environmental requirements. The Application workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us.

(i) Audit Requirements: An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b). This is a threshold requirement outlined in the application, therefore applications that have outstanding past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

(j) Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs

Attn: Neighborhood Stabilization Program

221 East 11th Street

Austin, TX 78701-2410

or,

via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

Attn: Neighborhood Stabilization Program

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the administration of the Neighborhood Stabilization Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

Figure 4: Exhibit 1. Texas Neighborhood Stabilization Program County Need Score.

Exhibit 1. Texas Neighborhood Stabilization Program County Need Score.

County Name	Direct Texas NSP Allocation	Select Pool Eligible	Need Score
Tarrant	$7,320,349		13320
Dallas	4,684,332		10684
Cameron	3,465,632		9466
Bexar	3,150,408		9150
Hidalgo	3,005,258		9005
Harris	2,875,584		8876
Nueces	2,522,253		8522
Collin	2,278,454		8278
Webb	2,025,812		8026
Travis	2,017,952		8018
Montgomery	1,697,675		7698
El Paso	1,648,634		7649
Brazoria	1,586,234		7586
Potter	1,579,681		7580
Jefferson	1,498,945		7499
Denton	1,166,500		7166
Taylor	1,099,259		7099
Williamson	1,066,554		7067
Bell	1,064,488		7064
Lubbock	1,057,705		7058
Galveston	1,003,104		7003
Wichita	803,464		6803
Fort Bend	726,857		6727
Ector	699,232		6699
McLennan	647,971		6648
Gregg		Gregg	6143
Tom Green		Tom Green	6055
Grayson		Grayson	5809
Brazos		Brazos	5761
Victoria		Victoria	5741
Orange		Orange	5634
Bowie		Bowie	5593
Harrison		Harrison	5583
Midland		Midland	5507
Smith		Smith	5502
Comal		Comal	5498
Hays		Hays	5326
Ellis		Ellis	4325
Johnson		Johnson	4284
Kaufman		Kaufman	3964

County Name	Direct Texas NSP Allocation	Select Pool Eligible	Need Score
Parker		Parker	2295
Bastrop		Bastrop	1898
Hood		Hood	1658
Liberty		Liberty	1508
Hunt		Hunt	1473
Henderson		Henderson	1432
Rockwall		Rockwall	1266
Wise		Wise	996
Hill		Hill	766
Burnet		Burnet	766
Navarro		Navarro	746
Guadalupe		Guadalupe	683
Randall		Randall	567
Angelina		Angelina	495
Wood		Wood	463
Matagorda		Matagorda	452
Lamar		Lamar	401
San Patricio		San Patricio	391
Atascosa		Atascosa	389
Milam		Milam	366
Maverick		Maverick	359
Jim Wells		Jim Wells	341
Eastland		Eastland	316
Van Zandt		Van Zandt	300
Kleberg		Kleberg	296
Grimes		Grimes	292
Hale		Hale	269
Palo Pinto		Palo Pinto	243
Nacogdoches		Nacogdoches	242
Hopkins		Hopkins	242
Kendall		Kendall	234
Coryell		Coryell	230
Cooke		Cooke	224
Kerr		Kerr	210
Medina		Medina	196
Aransas		Aransas	184
Caldwell		Caldwell	183
Wilson		Wilson	176
Gonzales		Gonzales	169
Waller		Waller	167
Anderson		Anderson	165
Val Verde		Val Verde	165

County Name	Direct Texas NSP Allocation	Select Pool Eligible	Need Score
Montague		Montague	165
Llano		Llano	165
Washington		Washington	159
Fannin		Fannin	159
Walker		Walker	152
Upshur		Upshur	152
Brown		Brown	150
Cherokee		Cherokee	145
Jackson		Jackson	131
Austin		Austin	127
Starr		Starr	115
Wharton		Wharton	114
Polk		Polk	111
Gillespie		Gillespie	106
Jasper		Jasper	106
Leon		Leon	105
Willacy		Willacy	105
Erath		Erath	103
Howard		Howard	102

Figure 5: Texas NSP Activity and Funding Timeline.

TRD-200901133

Texas NSP
Activity and Funding Timeline

Timeline:		Mar 2009	Apr 2009	Jun 2009	Sep 2009	Dec 2009	Jun 2010	Sep 2010	Jun 2011	Apr 2019
Benchmark:		**TDHCA NOFA**	**Application Submission**	**Processing Award and TDHCA Contracting**	**Broad Environmental Review**	**Activity Committed**	**Activity Closed/ Acquired**	**Maximum Close Extension**	**Activity Completed/Sold**	**Land Bank Max Hold Period Total of 10 Years**
Time since last benchmark		*0*	*1 Month*	*2 Months*	*3 Months*	*3 Months*	*6 Months*	*3 Months*	*9 Months*	*8 years*
Total Time from NOFA		0	1 Month	3 Months	6 Months	9 Months	15 Months	18 Months	27 Months	10 Years
Activity:	Method of Finance	Activity Delivery Cost Cap								
Financing	Loan/Grant	10%			County Wide Environmental Assessment Submited	Household and Property Identified Under contract Subject to Environmental *Set-up activity*	Specific Property Environmental Clearance Acquisition Consummated	100% Drawn	(Financing for Acquisition and Acquisition /Rehabilitation)	
Acquisition	Loan	15%			County Wide Environmental Assessment Submited	Property Identified Under contract Subject to Environmental *Set-up activity*	Specific Property Environmental Clearance Acquisition Consummated		Property Resold and Closed **Repayment to The NSP Program**	
Rehabilitation	Loan	20%				Only available with acquisition activity *Set-up activity*		Rehabilitation Work Initiated	100% Drawn **Repayment to The NSP Program**	
Land Bank										
Select or Direct Subgrantee Through Initial Allocation	Loan	20%			County Wide Environmental Assessment Submited	Property Identified Under contract Subject to Environmental *Set-up activity*	Specific Property Environmental Clearance Acquisition Consummated			Property Resold and Closed **Repayment to The NSP Program**
TSAHC	Loan	20%				Separate NOFA to Facilitate Additional Land Banking Activity	Property Identified Under contract Subject to Environmental *Set-up activity*	*6 Months After Being Identified* Specific Property Environmental Clearance Acquisition Consummated		Property Resold and Closed **Repayment to The NSP Program**
Clearance	Grant	5%			County Wide Environmental Assessment Submited	Specific Property Environmental Clearance *Set-up activity*		100% Drawn		
Redevelopment	Loan	20%			County Wide Environmental Assessment Submited	Property Identified *Set-up activity*	Specific Property Environmental Clearance Contract to Fund Redevelopment in Place	Loan Closing	100% Drawn	**Repayment Over 3 Years**
Cumulative Administrative Fund Draw Limits:				10% prior to activity set up	20% of prorata admin based on percentage of activities set up	20% of prorata admin based on percentage of activities set up	40% of prorata admin based upon percentage of activities closed	Proportionate amount based on contract drawn to date up to 90% drawn	100% after closeout of activity	

Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: March 18, 2009

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by TRI-STATE INSURANCE COMPANY OF MINNESOTA, a foreign fire and casualty company. The home office is in Luverne, Minnesota.

Application to do business in the State of Texas by NORTH AMERICA DENTAL PLANS, INC., a domestic Health Maintenance Organization. The home office is in Austin, Texas.

Application for admission to the State of Texas by ECHELON PROPERTY & CASUALTY INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Chicago, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200901132
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 18, 2009

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Correction of Error

The Texas Department of Insurance adopted amendments to 28 TAC Chapter 3, Subchapter Y, including §3.3842, concerning Appropriateness of Recommended Purchase, in the January 30, 2009, issue of the *Texas Register* (34 TexReg 599). Figure: 28 TAC §3.3842(i)(7) entitled "Things You Should Know Before You Buy Long-Term Care Insurance" was published in the Tables & Graphics portion of the issue. The toll-free phone number that appears in the first box of the table on page 721 is incorrect. The corrected wording is as follows:

• The Texas Health Information Counseling and Advocacy Program (HICAP) offers free one-to-one counseling services, concerning whether a long-term care insurance is a suitable option for you, that can be accessed through the toll free number 1-800-252-9240. For insurance agent, insurance company and any other long-term care insurance information, you may call the Consumer Help Line of the Texas Department of Insurance at 1-800-252-3439.

The corrected Figure: 28 TAC §3.3842(i)(7) is published in the Texas Administrative Code.

TRD-200901119

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Third Party Administrator Application

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application of TPA SYSTEMS, INC., a domestic third party administrator. The home office is HOUSTON, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register,* addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-200901128
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 18, 2009

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Texas Lottery Commission

Instant Game Number 1192 "Jingle Jumbo Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1192 is "JINGLE JUMBO BUCKS". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1192 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1192.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, WREATH SYMBOL, $10.00, $20.00, $25.00, $50.00, $100, $500, $1,000, $2,500 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1192 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
WREATH SYMBOL	WREATH
$10.00	TEN$
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND

$500	FIV HUND
$1,000	ONE THOU
$2,500	25 HUND
$100,000	HUN THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $2,500 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1192), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1192-0000001-001.

K Pack - A pack of "JINGLE JUMBO BUCKS" Instant Game tickets contains 050 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "JINGLE JUMBO BUCKS" Instant Game No. 1192 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "JINGLE JUMBO BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the JINGLE NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "WREATH" play symbol, the player wins the PRIZE shown for that symbol instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "WREATH" (auto win) play symbol will only appear once on a ticket.

C. No more than four (4) matching non-winning prize symbols will appear on a ticket.

D. No duplicate JINGLE NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and $10).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "JINGLE JUMBO BUCKS" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JINGLE JUMBO BUCKS" Instant Game prize of $1,000, $2,500 or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "JINGLE JUMBO BUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "JINGLE JUMBO BUCKS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "JINGLE JUMBO BUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 1192. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1192 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	652,800	6.25
$20	408,000	10.00
$50	81,600	50.00
$100	58,718	69.48
$200	8,840	461.54
$500	2,686	1,518.99
$1,000	238	17,142.86
$2,500	68	60,000.00
$100,000	4	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.36. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1192 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1192, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200901084
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 16, 2009

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North Central Texas Council of Governments

Consultant Contract Award

Pursuant to the provisions of Texas Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the December 19, 2008, issue of the *Texas Register* (33 TexReg 10380). The selected consultant will perform technical and professional work for the University of North Texas-Dallas Area Context Sensitive Transportation Study.

The consultant selected for this project is Kimley-Horn and Associates, 2201 West Royal Lane, Suite 275, Irving, Texas 75063. The maximum amount of this contract is $125,000.

TRD-200901054
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 12, 2009

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 10, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Television, Inc. for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36786 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the removal of the municipal boundaries of the City of Wortham, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36786.

TRD-200901081
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 16, 2009

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 13, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36797 before the Public Utility Commission of Texas.

The requested amended CFA service area includes expanding the service area footprint to include the City Limits of Beaumont and Bridge City, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36797.

TRD-200901122
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2009

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 12, 2009, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc. d/b/a Suddenlink Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36795 before the Public Utility Commission of Texas.

The requested amended CFA service area includes expanding the service area footprint to include the City Limits of Olney, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36795.

TRD-200901121
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2009

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Correction of Error

The Public Utility Commission of Texas repealed and adopted new 16 TAC §25.475 in the March 13, 2009, issue of the *Texas Register* (34 TexReg 1806). New §25.475, General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers, includes a pricing chart at subsection (g)(6). Figure: 16 TAC §25.475(g)(6) appears on pages 1886 and 1887 in the Tables & Graphics portion of the issue. There are two errors in the graphic the agency submitted for publication. The final letter "o" was inadvertently included at the end of the table and the last line was omitted.

The last two lines of the table should read as follows:

Contact info, certification number, version number

Additional information may be added below.

The corrected version of Figure: 16 TAC §25.475(g)(6) is published in the Texas Administrative Code.

TRD-200901112

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application for sale, transfer, or merger filed with the Public Utility Commission of Texas on March 11, 2009, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED, §14.101 and §37.154 (Vernon 2007 & Supplement 2008) (PURA).

Docket Style and Number: Application of South Texas Electric Cooperative, Inc. for Sale, Transfer, or Merger of Magic Valley Electric Cooperative, Inc., Docket Number 36790.

The Application: This transaction involves the transfer of ownership responsibilities from Magic Valley Electric Cooperative, Inc. (MVEC) to South Texas Electric Cooperative, Inc. (STEC) for all transmission line, switching station, and step down substation assets, including associated property rights, communications equipment, control buildings, and any other equipment installed for the operation and maintenance of transmission line and station equipment. The transaction does not include the transfer of certificated facilities. No distribution service territories are affected by the transfer and no MVEC distribution line or "down-line" distribution equipment is being transferred.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 36790.

TRD-200901080
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 16, 2009

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Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 13, 2009, for waiver of denial by the Pooling Administrator (PA) of Southwestern Bell Telephone Company d/b/a AT&T Texas' (AT&T Texas) request for assignment of one thousand-block of numbers in the Pittsburg rate center.

Docket Title and Number: Petition of Southwestern Bell Telephone Company d/b/a AT&T Texas for Waiver of Denial of Numbering Resources, Docket Number 36798.

The Application: AT&T Texas submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because AT&T Texas did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 1, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36798.

TRD-200901123
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2009

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in Menard County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on March 12, 2009, to amend a certificate of convenience and necessity for a proposed transmission line in Menard County, Texas.

Docket Style and Number: Application of American Electric Power Texas North Company to Amend its Certificate of Convenience and Necessity for a Proposed 69 kV and 138 kV Transmission Line Project in Menard County, Texas, Docket Number 36210.

The Application: The application of American Electric Power Texas North Company (AEP TNC) for a proposed transmission line project is necessary to allow the rerouting of existing transmission lines into the newly constructed Yellowjacket substation. The new Yellowjacket substation has been completed and is located on the west side of U.S. Business Highway 83 near the intersection of Pine and Cypress streets in Menard, Texas. The planned retirement of the old Menard substation results in the need to re-route the existing transmission lines into the new Yellowjacket substation. The estimated date to energize facilities is March 1, 2011. The estimated cost is approximately $1,158,333.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is April 27, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 36210.

TRD-200901120
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2009

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Notice of Request for Review of Proposed Amended Nuclear Decommissioning Trust Agreements

Notice is given to the public of an application for review of the proposed amendments to two nuclear decommissioning master trust agreements for Units 1 and 2 of the South Texas Project Electric Generating Station filed with the Public Utility Commission of Texas on March 12, 2009, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §§14.001, 14.002, 39.205 (Vernon 2007 & Supplement 2008) (PURA) and Public Utility Commission Substantive Rule §25.303.

Docket Style and Number: Request of NRG South Texas LP for Review of Proposed Amended Nuclear Decommissioning Trust Agreements, Docket Number 36796.

The Application: NRG South Texas LP (NRG) filed a request for commission review of the proposed amendments to its two nuclear decommissioning master trust agreements for Units 1 and 2 of the South Texas Project Electric Generating Station (STP). NRG maintains a 30.8% Trust Agreement and a 13.2% Trust Agreement (STP Trust Agreements) related to its 44.0% ownership interest in STP Units 1 and 2. In the commission's October 10, 2008 final order in Docket Number 35772, the commission approved review of the cost of decommissioning STP Units 1 and 2 and approved the requested revised annual funding amounts for each of the decommissioning trusts. As part of the final order, the commission also approved the creation of new spent fuel management subaccounts within each of the NRG Trust Agreements. As a result of that final order, NRG will allocate a specific portion of the existing and future funds in each of the NRG STP nuclear decommissioning trusts to the newly created spent fuel management subaccounts related to Units 1 and 2 within each trust. The subaccounts would allow for the accumulation of segregated funds that could be used to pay for the pre-shutdown disposal of the components.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing-and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 36796.

TRD-200901082
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 16, 2009

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Public Notice of Workshops

A facilitated meeting is scheduled for Wednesday, April 29, 2009, at 9:00 a.m. The purpose of this project is to develop a method for the distribution of in-home-monitors for eligible low-income customers pursuant to the Final Order in Docket Number 35718, *Oncor Electric Delivery Company, LLC's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for Advanced Metering System (AMS) Surcharge*. At this meeting, Oncor will provide its pilot project solution for distribution of in-home-monitors to low income customers. Meeting documents from previous meetings are located on the project web page at: http://www.puc.state.tx.us/electric/projects/36234/36234.cfm

These workshops will be held in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 36234 has been established for this proceeding.

Questions concerning the workshops or this notice should be referred to Christine Wright, Competitive Markets Division, at (512) 936-7376. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200901127
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2009

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Request for Comments

The Public Utility Commission of Texas (commission) has initiated a new project to review its rules relating to tariff filings of telecommunications utilities as set out in Public Utility Regulatory Act §52.251. Project Number 36622, *Rulemaking to Amend Tariff Filing Requirements for Telecommunications Utilities,* has been established for this proceeding. The commission requests that interested persons file comments in response to the following questions:

1. Does PURA §52.251, or any other PURA provision, authorize the commission to allow telecommunications utilities to incorporate by reference rates for tariff filings of telecommunications utilities? Please reference and discuss all applicable PURA provisions.

2. If PURA §52.251 does permit rates to be incorporated by reference in tariff filings of telecommunications utilities:

(a) Please list all commission rule(s) that would need to be amended to allow incorporation by reference;

(b) Please state whether "filing" would need to be defined in commission rules in order to allow incorporation by reference pursuant to PURA §52.251;

(c) Please state the type(s) of tariff filings for which incorporation by reference may be appropriate;

(d) Please describe any limitations that should be placed on incorporation by reference pursuant to PURA §52.251;

(e) Please explain how the commission could ensure that it is able to maintain rates on file at the commission if rates are permitted to be incorporated by reference in tariff filings;

(f) Should only certain sources of information be permitted when accepting rates incorporated by reference into a tariff filing and, if so, what sources should be considered acceptable?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by April 17, 2009, 21 days after the date of publication of this notice. All responses should reference Project Number 36622.

Questions concerning this notice should be referred to Shelah Cisneros, Legal Division, at (512) 936-7265 or shelah.cisneros@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200901124
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 18, 2009

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The Texas A&M University System

Asbestos Consulting Services

Request for Proposals (RFP): RFQ01 FPC-09-002

The Texas A&M University System is seeking submittals from interested vendors who specialize in providing asbestos consulting services, including program design and air monitoring, of superior quality, under the direction of Facilities Planning and Construction, for the removal of any Asbestos Containing Building Materials (ACBM) consistent with the delivery process as utilized by The Texas A&M University System for various construction projects located throughout the A&M System.

The RFQ documentation may be obtained by contacting: Don Barwick, HUB & Procurement Manager, System Office of HUB & Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste 1273, College Station, Texas 77845 or e-mail at dbarwick@tamu.edu.

The A&M System will base its choice on demonstrated competence, knowledge, and qualifications for the services; and, if other considerations are equal, give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Proposals must be received on or before 2:00 p.m. CDT on April 14, 2009.

TRD-200901097
Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: March 16, 2009

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Request for Proposal

RFP 9-0010 Enrollment Management Consultant

Tarleton State University is accepting submissions and intends to enter into an Agreement with a nationally recognized enrollment management consulting company who has significant experience with Texas

public higher education that will assist in the development of a comprehensive enrollment management plan

The RFP document may be obtained by contacting: Beth Chandler, Director of Purchasing, Tarleton State University, Box T-0600, Stephenville, TX 76402 or e-mail at chandle@tarleton.edu.

This review is required for Tarleton to strengthen its position as a provider of quality programs by seeking council from enrollment management professionals who will aid Tarleton in exploring opportunities to sustain overall enrollment growth by conducting enrollment opportunity analysis, immediate, short and long term enrollment planning, institutional image, competitive position analysis, branding strategies, and retention strategies.

Tarleton State University will base its choice on demonstrated competence, knowledge, and qualifications on the reasonableness of the proposed fee for the services; and if other considerations are equal give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Proposals must be received on or before 3:00 p.m. CDT on May 5, 2009.

TRD-200901115
Donna Harrell
Buyer
The Texas A&M University System
Filed: March 18, 2009

Workforce Solutions Brazos Valley Board

Notice of Release of Request for Proposals

On March 17, 2009, Workforce Solutions Brazos Valley Board (WSBVB) will release a Request for Proposals (RFP) for WIA Youth Training Programs Including Summer Youth Stimulus Funding for Youth Age 14 - 24 Years. The proposal requirements are contained in the Request for Proposal which may be viewed and printed online at www.bvjobs.org. The Board is seeking one or more contractors to provide the requested services.

Due Date: An original and four copies of a written proposal are due to the Board's offices no later than 4:00 p.m. on April 9, 2009. No proposals will be accepted after this deadline.

Proposals may be hand delivered to:

Richard Rogers, Consultant

Workforce Solutions Brazos Valley Board

3991 East 29th Street

Bryan, Texas 77802

Attention: WIA Youth Training Programs RFP Response

Proposals may be mailed to:

Richard Rogers, Consultant

Workforce Solutions Brazos Valley Board

P.O. Box 4128

Bryan, Texas 77805

Attention: WIA Youth Training Programs RFP Response

Potential respondents may pose written questions concerning this RFP by e-mail. Contact Richard Rogers, Consultant at Richard@sw-texas.net. No questions will be accepted after March 25, 2009. A bidders conference will be held on March 24, 2009 at 1:00 p.m. at 3991 East 29th Street in Bryan, Texas. The contact person for this RFP is Richard Rogers (512) 963-4895.

TRD-200901077
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: March 13, 2009

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 33 (2008) is cited
as follows: 33 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).